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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 MICHAEL PICARELLA,

4 Plaintiff,

5 v.

14 CV 4463 (ALC)

6 HSBC (USA) SECURITIES, INC.,

7 Defendant.

8 -----x

New York, N.Y.
December 5, 2016
9:30 a.m.

10 Before:

11 HON. ANDREW L. CARTER,

12 District Judge

13 APPEARANCES

14 LIDDLE & ROBINSON LLP
15 Attorneys for Plaintiff

16 BY: JAMES R. HUBBARD
17 BLAINE H. BORTNICK
ASA F. SMITH
CHRISTINE PALMIERI

18 BOIES, SCHILLER & FLEXNER LLP
19 Attorneys for Defendant

20 BY: RANDALL W. JACKSON
DAVID L. SIMONS
NICHOLAS STANDISH

21 GIBSON, DUNN & CRUTCHER LLP
22 Attorneys for Defendant

23 BY: GABRIELLE F. LEVIN
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1 (Jury not present, case called)

2 THE COURT: Good morning everyone.

3 So I have been informed by my wonderful and talented
4 deputy that the jurors should be ready around 10:15, so we'll
5 make that call then and proceed with jury selection.

6 I received the back-and-forth requests for a premotion
7 conference regarding the defendant's request for an adverse
8 inference. I'm not going to rule on that now. Defense counsel
9 is free to inquire of the witness on the stand about these
10 issues or potential issues with these documents and then we'll
11 figure that out when we give the final instructions to the
12 jury. It seems to me that I won't prejudge it much more than
13 that. I will allow defense counsel to inquire as to that, but
14 I don't think it's appropriate for me to rule on that right
15 now.

16 Any thoughts on that by plaintiff or defense?

17 MR. JACKSON: No, your Honor.

18 MR. HUBBARD: No, your Honor.

19 THE COURT: Is there anything else that take up before
20 jury selection?

21 MR. HUBBARD: Your Honor, I have an amended list of
22 exhibits. With the pretrial order your Honor will recall that
23 we each have an exhibit, the Plaintiff's Exhibit A to the
24 pretrial order. And what I have done -- obviously I need your
25 permission to do this, but I have added ten exhibits at the end

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1 of my list from the defendant's list. They're not new, they're
2 from the defendant's list. I put a plaintiff's number on them
3 and added them to this list just so that I can kind of keep
4 them in my order of proof and that kind of thing, it's easy for
5 me.

6 The defendant obviously has not had a chance to object
7 to them because they didn't go through the pretrial order
8 process, but they are all from the defendant's exhibit list.

9 THE COURT: And have you shown this to defense counsel
10 yet?

11 MR. HUBBARD: Yes, sir.

12 THE COURT: Defendants have any view on this?

13 MR. JACKSON: Your Honor, this isn't a major issue.
14 We have had a chance --

15 THE COURT: You said this is or is not?

16 MR. JACKSON: This is not a major issue. We haven't
17 had a chance to look at all this in detail, but what we just
18 told Mr. Hubbard is that we think for most of these it won't be
19 a problem. We would reserve our right to object on evidentiary
20 bases that may apply depending where there may be a slightly
21 different situation with him offering it, but I think for most
22 of these it shouldn't be an issue, it's just remarking. And
23 there may be some exhibits that would be offered duplicatively
24 just if we don't have the time to sort of sync up and make sure
25 exactly what he has is the same as ours, but this is not a

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1 major issue, your Honor.

2 THE COURT: And while we're on that topic, again we're
3 get close to the end of the year holiday season. Let's try to
4 make sure we can move this case as expeditiously as possible.
5 Obviously counsel have an obligation to object to any evidence
6 that they feel is inappropriate, but if, for example, there are
7 documents that one side seeks to move into evidence, and if we
8 know ahead of time there is no objection, instead of going
9 through laying the foundation for this, if counsel could just
10 try to confer, or at least at that time if counsel could just
11 say there's no objection to this being admitted we can cut
12 through the laying of the foundation and all that, because
13 that's typically not the most rivetting testimony for jurors.

14 MR. JACKSON: We completely agree, your Honor. We
15 understand.

16 THE COURT: Anything else that we need to take up
17 before we start jury selection?

18 MR. HUBBARD: Not for the plaintiff, your Honor, thank
19 you.

20 MR. JACKSON: Just very briefly, your Honor. One, we
21 wanted to confirm, is there an instruction -- your Honor had
22 suggested at the final pretrial conference that there was an
23 instruction that Court intended to give to certain of the
24 witnesses potentially related to the pseudonym issue. There
25 may be confusion on our part on that.

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1 THE COURT: I had not planned on doing that. My hope
2 is that we dealt with that in advance enough so that counsel
3 could have those witnesses prepped. And I think that with the
4 pseudonym that was chosen I wanted to avoid any issue where I
5 had to say to a witness please refer to this person as so and
6 so. So I would hope to avoid doing anything like that.

7 MR. JACKSON: Yes. Your Honor. And it's our
8 understanding that the jury is not going to be exposed to any
9 of that and they're not going to be exposed to the fact that
10 we're using a pseudonym, so we attempted to do that. We may
11 need to confer with some people briefly before they come in,
12 but thank you.

13 THE COURT: Anything else at this time?

14 MR. HUBBARD: Not from the plaintiff.

15 MR. JACKSON: No, your Honor.

16 THE COURT: Have the parties come to an agreement if
17 during the course of the trial there are potential witnesses in
18 the audience? What is the parties' position about potential
19 witnesses being in the audience when other witnesses are
20 testifying? Do the parties have any position on that?

21 MR. HUBBARD: Your Honor, I don't have strong feelings
22 about invoking the rule against witnesses. I would abide by
23 the Court's guidance with respect to that.

24 MR. JACKSON: Your Honor, we would prefer if witnesses
25 who have not yet testified don't sit in the courtroom while

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1 other witnesses are testifying, but apart from that we don't
2 have any views on it.

3 THE COURT: Okay.

4 MR. JACKSON: I was just going to ask if the Court
5 could perhaps -- we got the questionnaire that the Court's
6 deputy was kind enough to pass out to us, we just wanted to
7 clarify, is this the preliminary questionnaire? Does the Court
8 intend to ask additional questions specific to the case?

9 THE COURT: Yes, I plan -- I will ask the potential
10 jurors lots of qualifying questions. At the end of the
11 qualifying questions that I ask the potential jurors, as well
12 as making statements about the issues in this case and asking
13 questions, some general questions about this case, when I have
14 done that, I will confer with counsel and find out if counsel
15 have any additional questions you would like to me to ask to
16 the panel as a whole or to any particular juror. And counsel
17 will exercise any challenges, any final challenges for cause at
18 that point. The jurors will go one by one and read out the
19 answers to the questionnaire. So this is sort of at the end to
20 help counsel exercise their peremptory challenges, but all of
21 the sorts of challenges for cause and all those sorts of
22 questions will be asked first.

23 MR. JACKSON: That's fine, your Honor, thank you.

24 And I was going to ask if the Court could just -- I
25 think that the Court was planning to help us, but we are going

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1 to use a struck panel type method?

2 THE COURT: Correct. So we will qualify 16 jurors.
3 Once we have gone through the challenges for cause we will have
4 16 jurors seated here, each side has three peremptory
5 challenges, and assuming each side exercises all three
6 peremptory challenges, we'll have ten jurors left.

7 MR. HUBBARD: Your Honor, when we do that, do we do
8 that in the presence of the jury, exercise the peremptory
9 challenges in the presence of the jury?

10 THE COURT: No. What will happen is I will ask
11 questions of the jurors, and from time to time there will be
12 jurors who have to be excused and replaced with other jurors
13 for cause challenges and the like. And then once we have done
14 that, the jurors will go through this questionnaire, each
15 individual juror will give the answers to the questionnaire.
16 Then we will take a recess, counsel can confer with their own
17 tables briefly, and then we will go in the back and counsel
18 will exercise their challenges, again one through 16. And when
19 we come back, counsel aren't going to say anything, my deputy
20 will let the jurors know who has been selected and who hasn't
21 been selected, so that will not be done in the presence of the
22 other jurors.

23 MR. HUBBARD: Is the exercise of the peremptory
24 challenge alternating?

25 THE COURT: Yes.

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1 MR. HUBBARD: May I make one other comment?

2 THE COURT: Sure.

3 MR. HUBBARD: With respect on the preliminary
4 questionnaire, the last question relates to service as a juror.
5 Is there a question somewhere in your qualifying questions
6 related to prior participation as a plaintiff or a defendant in
7 a piece of litigation?

8 THE COURT: Yes.

9 MR. HUBBARD: Thank you.

10 THE COURT: Anything else for me at this time?

11 MR. HUBBARD: Not for the plaintiff.

12 THE COURT: Okay, I will see you soon.

13 MR. JACKSON: Thank you very much.

14 MR. BORTNICK: 10:15, your Honor?

15 THE COURT: Yes. Let me ask, does counsel have --
16 counsel have had some more time to think about their opening
17 statements. Have counsel been able to sort of trim the opening
18 statements any, or what's the anticipated time for plaintiff's
19 opening statement?

20 MR. HUBBARD: I think I'm the guy that is supposed to
21 be doing the trimming because I said an hour. Your Honor, I am
22 going to try for 45 minutes, with your permission.

23 THE COURT: Okay. And defense counsel?

24 MR. JACKSON: Your Honor, I still expect to be 25
25 minutes, 30 at the very most.

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1 THE COURT: Okay, thank you. See you soon.

2 (Recess taken and jury selection was conducted off the
3 record)

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1 AFTERNOON SESSION

2 2:38 p.m.

3 (Jury not present)

4 THE COURT: Please be seated. So I'm going to start
5 with opening statements soon. First I want to let the parties
6 know what we're going to do. When the jurors get in I will
7 have my deputy swear the jurors. I will give them a couple of
8 quick instructions about note-taking, I will give them quick
9 instructions about that. I will let them know about opening
10 statements just generally that opening statements are not
11 evidence, it's an outline of what the lawyers believe the
12 evidence is going to show in the case. And I will give them an
13 instruction about objections and how to treat objections. And
14 then we'll proceed with the opening statements.

15 Again, from plaintiff's counsel what's the estimated
16 length of your opening statement? Is it an hour, 45 minutes?
17 I want to give the jurors, especially since it's the afternoon,
18 I want to give them a sense of what to expect.

19 MR. HUBBARD: Forty-five minutes.

20 MR. JACKSON: Twenty-five to 30 minutes, your Honor.
21 Judge.

22 THE COURT: Yes.

23 MR. JACKSON: Does the Court plan to give any
24 afternoon -- does the Court plan to take any break in between
25 the opening statements or is it just going to be wait and see

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1 how it plays out.

2 THE COURT: You mean in between the opening
3 statements?

4 MR. JACKSON: I'm not saying there needs to be. I'm
5 just saying is that something the Court --

6 THE COURT: I don't anticipate taking a break between
7 the opening statements. We'll see what happens.

8 As soon as all the jurors are here we will get going.

9 Who is the first witness that's going to be called?

10 MR. HUBBARD: Your Honor, Mr. Picarella will be the
11 first witness.

12 THE COURT: Are counsel planning on using the
13 projector during the opening statement?

14 MR. HUBBARD: I'm not, your Honor.

15 THE COURT: Defense counsel?

16 MR. JACKSON: No, your Honor.

17 THE COURT: Okay.

18 MR. JACKSON: Actually, your Honor, I think I will use
19 it just for a couple of brief moments. So it probably should
20 be left up.

21 THE COURT: And have you shown plaintiff's counsel
22 what it is you plan to put up there?

23 MR. JACKSON: I've talked with plaintiff's counsel
24 about whether or not there are any objections to certain
25 exhibits. There are just a couple of exhibits I'm going to

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1 talk about that we have no objection on.

2 THE COURT: Have you shown this to plaintiff's
3 counsel?

4 MR. JACKSON: They've seen the exhibits. I was
5 potentially going to call up a couple of the exhibits.

6 MR. HUBBARD: I don't have any objection as long as
7 it's one of the exhibits -- as long as it's an exhibit we
8 didn't object to.

9 THE COURT: Why don't we just confirm that.

10 MR. JACKSON: I will confirm that, your Honor, right
11 now.

12 THE COURT: Let's get confirmation of that.

13 MR. JACKSON: Absolutely.

14 THE DEPUTY CLERK: They're all here, Judge.

15 THE COURT: Okay. Let's bring them in.

16 (Continued on next page)
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1 (Jury present)

2 THE COURT: Thank you. Please be seated. Welcome
3 back. I hope you had a wonderful lunch. Now I'm going to ask
4 my wonderful and talented deputy to swear you all in.

5 (A jury of ten was impanelled and sworn)

6 THE COURT: We're going to proceed to opening
7 statements soon. Just a couple of quick instructions. I will
8 allow you to take notes if you wish. You are not required to
9 take notes. And we have provided notebooks for you to use.
10 Here are a couple of rules about taking notes. You should not
11 allow your note-taking to interfere with your ability to pay
12 attention to what's happening during the course of the trial.
13 Also, any notes that you take are an aid to your memory and
14 must not take precedence over your independent recollection.

15 Also, as you can see, we have a fantastic court
16 reporter sitting right here who is taking down everything
17 that's being said. If your notes are in conflict with the
18 official transcript, you should rely on the official transcript
19 and not your notes.

20 At the end of the day my deputy will collect the
21 notebooks. The parties will not see the notebooks. We will
22 not look into them. But we will take them just so that they
23 can be safeguarded. We'll give those to you at the start of
24 the next day.

25 In addition, let me give you an instruction about

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Opening - Mr. Hubbard

1 objections. Counsel have an obligation to make objections.
2 I'm sure you've seen that on television. What happens is when
3 a lawyer makes an objection you should wait for me to rule on
4 the objection. If I overrule the objection, then you should
5 listen to the answer to that question and you shouldn't give
6 any sort of special consideration to the question because an
7 objection was raised to that question.

8 On the other hand, if I sustain an objection, you are
9 to disregard the question and you are not to speculate as to
10 what the answer might have been.

11 Having said that, we're going to proceed with opening
12 statements. Opening statements are not evidence. They are an
13 outline given by the lawyers based on what they believe the
14 evidence will show. We will start off with plaintiff's counsel
15 who anticipates his opening statement will take about 45
16 minutes.

17 Go ahead counsel.

18 MR. HUBBARD: Thank you, your Honor.

19 Good afternoon, ladies and gentlemen. May it please
20 the Court.

21 As his Honor just indicated, now is the time for the
22 lawyers to give you an overview of what the evidence in the
23 case is expected to be. We're able to do that because, as
24 we've been preparing for the case, obviously we've been
25 studying the documents and preparing the testimony. So we have

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1 a pretty good feel for what you'll hear here in the courtroom.
2 So, what we try to do is give you somewhat of a roadmap of how
3 we will proceed in terms of the witnesses who you'll hear, the
4 evidence you'll hear, and an overview to some extent of what --
5 how the evidence fits into the issues you'll be asked to decide
6 at the conclusion of the case. So my purpose this afternoon is
7 to give you hopefully a helpful overview of what we expect the
8 evidence to be.

9 The plaintiff in this case seated here at our left is
10 Michael Picarella. Mr. Picarella is a former senior
11 vice-president of the defendant in this case, HSBC Bank. He
12 was employed by HSBC for approximately four years as a senior
13 vice-president of business development in their Manhattan
14 headquarters at 425 Fifth Avenue.

15 In 2012 the evidence in this case will show, we say,
16 he stood up for a young female coworker who was sexually
17 harassed by senior HSBC executives in his sales group by
18 reporting that unlawful conduct to his management and to the
19 firm's human resources section. Though HSBC concedes here that
20 he was right, that she was sexually harassed in violation of
21 the law and the bank's own rules, the evidence will show that
22 his senior management did not like it and they retaliated
23 against him for reporting that conduct.

24 So this is a retaliation case. Unlawful retaliation
25 is the issue you will be asked to decide.

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Opening - Mr. Hubbard

1 You will not be asked to decide if the young woman, in
2 fact, was sexually harassed. That issue is beyond us now. The
3 bank has admitted that she was. And so while there will be
4 some evidence about it because we have to demonstrate what the
5 complaints were and that Mr. Picarella engaged in protected
6 activity, protected from retaliation by reporting it, your
7 issue will be whether or not there was retaliation and not
8 whether or not she was sexually harassed.

9 You will learn from this evidence that after
10 Mr. Picarella reported the harassment to his management he was
11 passed over within a year for the management position he had
12 been hired to fill. He was soon, we say the evidence will
13 show, stripped of his major responsibilities as a senior
14 vice-president. And in March of 2015 he, in fact, was fired by
15 the circumstances that you will hear in some detail.

16 The bank will say it was because of poor performance
17 and not retaliation. The bank will show you a series of
18 performance reviews and from those reviews they'll lift
19 evidence that comments that in some places are critical.

20 Some of you have had performance reviews in your own
21 work. There will be constructive criticism in these
22 performance reviews. But one thing will be clear. There's a
23 big S on all of these reviews until he had been stripped, we
24 say, of all of his responsibilities. We say you'll see a big S
25 on all of those evaluations. And that S at HSBC stands for

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1 strong. He was rated a strong performer until he was stripped
2 of his responsibilities. And then in late 2014 his performance
3 was downgraded and the train was on the termination track.

4 So the issue in this case that you'll be asked to
5 decide is whether the adverse employment actions he suffered,
6 including his termination, were motivated in any part by the
7 complaints he made of the sexual harassment of his young
8 coworker and of the retaliation he suffered.

9 Was his termination, were these adverse actions,
10 passing him over for his promotion, taking his responsibilities
11 away, there's some other adverse employment actions, were those
12 things motivated by the complaints he made to management about
13 their treatment of his coworker, or were they solely, solely
14 based on his performance?

15 Because you will learn that the issue is not
16 whether -- the law will allow other reasons for termination.
17 What it will not allow -- the judge will give you the
18 controlling instructions, I'm just trying to give you an
19 overview of it -- but the law will not allow -- it will not
20 allow the retaliation to be motivated in any part by that kind
21 of animus.

22 So, you'll hear in this case perhaps some contention
23 that at some point he became a poor performer. But the best
24 evidence I think you'll see, the best evidence we say you'll
25 see that he was not terminated for poor performance because of

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1 his complaint; but because of his complaints, is that even
2 after rating him off track in 2014 when he had no work to do,
3 the bank was not content to write a performance review and say
4 you're a poor performer and now you're being managed out of the
5 bank. The evidence in this case will show they made up a false
6 reason to fire him; that they weren't confident enough that
7 they had the goods to terminate him simply on his performance.
8 And you'll see that at the end of this case when he was
9 terminated, and they'll concede it, I say, that he was -- that
10 he was, in fact, terminated for a reason that they admit they
11 had no proof of.

12 In the first part of 2014 -- '15, '15 he was accused
13 by the bank of leaking some confidential business information
14 after a conference call on January 12 of 2015. There was a
15 conference call on January 12, the evidence will show. The
16 next day a call from a New York Post reporter went to the
17 business section that had held this conference call.
18 Mr. Picarella was on the conference call. It was a group of 20
19 or so executives. The executive who -- reporter called, and
20 the executive recognized it's a reporter, had information that
21 could only have been obtained on that conference call. Two
22 days later a letter arrives for Mr. Picarella. You have been
23 suspended because we have reason to believe that you violated
24 our rules by leaking this confidential information to the
25 newspaper. They later admit, despite putting their financial

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1 crimes investigation unit on it to investigate it for months,
2 they later admit they found no evidence whatsoever. Yet two
3 days after that call they suspended saying that they had reason
4 to believe. They had no evidence that day and they had no
5 evidence when he was terminated, we say the evidence will show.

6 The head person in this group, this group he worked in
7 was called global banking and markets, the head of that group
8 was Didier Descamps. He now works for HSBC in Paris and he
9 will testify here on Friday.

10 I believe he will tell you that when, after that full
11 investigation by their financial crimes group, that no proof,
12 no proof was available about where the leak was from; and yet
13 in the termination letter, Mr. Picarella says that he's being
14 fired for performance, for poor performance, and because we
15 believe that you have leaked this information.

16 These complaints, I mentioned to you that he made to
17 the firm about the sexual harassment of his young coworker,
18 that activity is called protected activity. And the reason it
19 is called protected activity is that the law punishes
20 retaliatory reaction to reporting that kind of conduct. So the
21 law provides a degree of protection by punishing retaliation
22 for that kind of conduct.

23 And so one question you'll be asked here today is, in
24 fact, this week is whether or not he engaged in protected
25 activity by reporting -- by reporting this sexual harassment.

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1 Mr. Picarella worked in a grouped called business
2 development. His supervisor was a woman by the name of Eileen
3 Hedges. She was the head of business development. You will
4 learn from the evidence that Mr. Picarella was hired to be her
5 deputy. The bank anticipated that she would move into another
6 position. Testimony from some of the management will be that
7 the group was not performing well, that it was viewed to be
8 weak and that they needed a stronger -- some stronger
9 succession. And so they went out and they recruited and they
10 hired Mr. Picarella to be Ms. Hedges's deputy and obviously her
11 successor.

12 Shortly after that happened Ms. Hedges was moved by
13 her boss, Mr. Pizzimbono, who I think will testify here, she
14 was moved up to another floor and no longer reported to
15 Mr. Picarella.

16 By the summer of the next year, by the summer of 2012
17 she had been relieved of her management duties and a year later
18 she had been terminated. And the reason for both of those
19 things is the conduct that he complained about.

20 When Mr. Picarella was hired, Ms. Hedges' deputy --
21 Ms. Hedges' assistant was a 26-year-old analyst by the name of
22 Michelle Parker. And Ms. Parker set -- I may not get this
23 right but Mr. Picarella will get it right -- Ms. Parker I think
24 sat on the left of Mr. Picarella, Ms. Hedges on the right, on a
25 trading desk on the 9th floor at UBS headquarters here in

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Opening - Mr. Hubbard

1 Manhattan. So Mr. Picarella is in between Ms. Hedges, the
2 supervisor, and the young analyst.

3 In November, 2011 Mr. Picarella reported privately to
4 the chief operating officer, who will testify here, probably
5 tomorrow, Mr. Mullen. You'll see him here. He called
6 Mr. Mullen, who was working here in New York as a chief
7 operating officer, and said that Ms. Hedges had done something
8 that had shocked both he and the young woman. And you'll see
9 that it was the beginning of a pattern of misconduct. In this
10 case what she did was she exposed her breast on the trading
11 floor in front of these two employees.

12 Mr. Picarella is a grown man. And he's married. He
13 has two teenage children. And he saw this young woman react
14 visibly to what happened. Yet he's brand new to the firm.
15 He's trying to help Ms. Hedges make the group successful. He
16 doesn't want to cause any problem.

17 He goes to see Mr. Mullen. He's obligated to report
18 what happened because she reacted to it in such a way. But he
19 says to Mr. Mullen, please, let me speak to her. She's my
20 boss. Let me speak to her.

21 You'll find that she tended to be somewhat -- used
22 sexually aggressive language and that kind of thing, and you'll
23 hear some more about it. But he said let me go and see I'll
24 talk to her about it. No big deal. Big deal to the young
25 woman. But let me speak to her. He did. It goes worse.

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Opening - Mr. Hubbard

1 In the summer and fall of 2011 and into the spring of
2 2012 Mr. Picarella began to observe that Ms. Hedges began to
3 harass the young woman even more. She would, I use my word,
4 the evidence I think will show that she would drag her out to
5 bars near the office. She would come back to the office and
6 spread word that she had been sleeping with bank customers,
7 with bank clients and bank employees. She would address her
8 with sexually intimidating language. She would ask her what
9 kind of underwear she was wearing, if she had sex the night
10 before. This on the trading desk.

11 Mr. Picarella is sitting right in the middle. He's
12 not snooping. He's sitting there listening. He reports it.
13 He reports it to her. He doesn't go to HR now. He doesn't go
14 to management. He goes back to Ms. Hedges and he says you've
15 got to stop this. She's crying. She's emotionally upset. She
16 is ill. It's not -- it's very bad for her. You've got to stop
17 this. And he was concerned about her health. And, again, no
18 desire to harm Ms. Hedges, just to try to get it stopped. He
19 says please stop it.

20 She didn't. It continued.

21 He goes to his boss or her boss that he indirectly
22 reported to Mr. Pizzimbono and he reports what happened, what
23 she was saying about the young woman.

24 And Mr. Pizzimbono says you need to go talk to the
25 head of human resources, a woman by the name of Eileen Weiss

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1 who will testify here maybe tomorrow, maybe Wednesday. You go
2 tell Ms. Weiss what's going on. That's her job to take care of
3 this.

4 So the evidence will show that Mr. Picarella then
5 engaged in this protected activity, that he went to see the
6 head of human resources. He reported this sexually harassing
7 conduct, the language she was using, that she, in fact, was now
8 bullying him because she got mad at him because he was
9 reporting this to her.

10 At about that time word spread in the division that
11 Ms. Hedges and two male executives had sexually harassed this
12 young woman at an offsite conference down at the -- down at a
13 resort in Key Largo. And Ms. Parker eventually told
14 Mr. Picarella about it. He heard about it, her talking on the
15 phone about it. The management had heard rumors about it.
16 They came to him and said: Have you heard any of this? The
17 first time he said: No, I hadn't. But by late June he heard
18 rumors of what happened at Key Largo. I'll save that for later
19 this afternoon when Mr. Picarella testifies. But the long and
20 short of it was that the information was that Ms. Hedges was
21 encouraging this young woman to have sex with some of the men
22 that work for her in her presence at this meeting and that she
23 was visibly upset about it. Again, obviously sexual harassment
24 which he's obligated to report and which he did.

25 Mr. Picarella reported this to Ms. Weiss. She asked

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1 him to meet with some of her deputies. There's some memos
2 about this, about what he reported. And you'll see those.
3 You'll see those memos about what he reported. And by the
4 middle of 2012 Ms. Hedges had been placed on a final warning,
5 no management responsibility, and really was no longer involved
6 in the business group that Mr. Picarella was.

7 So we come to the issue of retaliation. What happened
8 next?

9 After he reported this sexual harassment, he began to
10 suffer what we say were adverse employment actions. And by
11 September -- he had been hired to take Ms. Hedges' place to be
12 her successor, he was her deputy. In September he was
13 approached by his two main managers, Ms. White and
14 Mr. Pizzimbono, and they told him that he was not getting the
15 job; that the job was going to Ms. Jenner who was a very
16 talented but much junior vice-president. He was a senior
17 vice-president. She was a very talented but much less
18 experienced employee. And she was given this job. He was
19 passed over. You'll see, for example, you'll see an e-mail
20 where somebody says Ms. Jenner was not on the promotion list at
21 the end of 2012 to become a senior vice-president because they
22 all knew that now Mr. Picarella was going to have to report to
23 her and it was going to look bad for him to report to a
24 vice-president. You'll see a memo in there. Somebody writes
25 and says she needs to be higher than him because they could see

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1 that that reporting relationship would be visibly out of whack.

2 He's passed over. He complains about it. Now he says
3 now I'm being retaliated against. There will be a bunch of
4 other things in here, without going into detail this afternoon,
5 there will be a bunch of other places where he was a senior
6 vice-president in this group and gradually he got stripped of
7 most of his major responsibilities to the time -- by the time
8 in 2014 when he had -- when he would say with shame that he
9 only had enough work to do about ten percent of the day. And
10 in order to keep from being embarrassed, he would be sitting at
11 his computer looking at financial news on the internet, and
12 going around the building and talking to colleagues. But he
13 had only enough work to fill ten percent of his time. You'll
14 hear -- there will be some debates about what he was doing in
15 2014, whether he was performing, how much work he had to do.
16 But the long and short of it is that you'll hear evidence as to
17 how his responsibilities were gradually pulled away from him in
18 2013 and 2014 until by the end of 2013, the end of '14 he
19 virtually had nothing, nothing to do.

20 A couple of examples. His responsibility, his major
21 responsibility for monitoring the bank's suitability
22 requirements for federal regulators were reassigned to
23 Ms. Jenner. His responsibility for on-boarding new clients and
24 clearing new clients and that kind of thing were taken away
25 from him.

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1 He complained again. And you'll see some memos in the
2 fall of 2013. And you'll then begin to see that he gets a new
3 manager, a gentleman by the name of Mr. Karam becomes his
4 manager. Mr. Karam is the man who ultimately recommends firing
5 him. Mr. Karam, we'll say, the evidence will show, was hostile
6 to him from the very beginning.

7 One of the things you'll want to look at as you go
8 through is to see if Mr. Picarella complains and reports this
9 unlawful activity. You've got to see if that is what generated
10 this punishment, these adverse actions. And so it doesn't just
11 come out of the blue. You've got to see if the people who were
12 complained about, if this generated some anger and some
13 hostility and some reason to try to retaliate. And we'll say
14 that you'll see that in this evidence. You'll see evidence of
15 hostility. His new boss, Mr. Karam, one month after he takes
16 over in May of 2012, the evidence will show Mr. Karam in a
17 written e-mail to Ms. Jenner, Ms. Jenner says, you know, he's
18 just sitting here drafting a letter. I'm going to redraft it
19 for him and send it back to him but I don't know if he'll sign
20 it. The evidence will be Mr. Karam writes back and says:
21 Don't worry. If he doesn't, I'll marginalize him.

22 This is a senior vice-president that he was managing,
23 a senior vice-president whose performance reviews he was doing,
24 yet he's threatening to marginalize him in the workplace. No
25 question about it.

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1 Mr. Karam continues to strip him of further
2 activities. One of the human resources folks sends a memo to
3 management saying: Do you want to fire Mike? Human resources
4 had nothing to do with whether this man continued to work or
5 not. Obviously, word was spreading that they were looking for
6 some way to manage him out of the firm.

7 Do you want to fire Mike? You'll see that in the
8 evidence.

9 Mr. Karam writes to the most senior management in the
10 company in London. Ms. White from the U.S. was there.
11 Mr. Descamps from the U.S. was there. They were meeting with
12 some senior HSBC people in London and somebody says: What do
13 you want to put on the list? Mr. Karam says: Picarella. And
14 the person in London, David Rose, writes back and says: What
15 about Picarella? And he writes back and says: You know, the
16 human resources problem.

17 He was an employee trying to do his job and his
18 manager puts him in the problem department. You'll determine
19 whether or not that was retaliatory or whether or not it was
20 motivated by animus.

21 Then you'll see that five days after he was passed
22 over for that job to report to Ms. Jenner, five days after that
23 he was put by Ms. Weiss, the woman he went to, to protect him,
24 she puts him on the bad boy list.

25 They have a list of performance conduct cases in the

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1 firm. It's circulated worldwide, senior management. One of
2 those managers will be here tomorrow or Wednesday to tell you
3 about it. There's a performance -- list of performance conduct
4 cases. The man who complained ends up accused on the
5 performance list. And it happens five times. Five times it
6 happens. She just keeps putting him on the list. And this is
7 the head of human resources he went for to report this activity
8 and to try to stop it.

9 In 2014 there is a meeting on November 21 of 2014.
10 Mr. Picarella meets with Mr. Karam. We're sort of getting near
11 the end now here of his tenure. And he meets with Mr. Karam
12 who is the managing director and is his manager. You'll see it
13 from the evidence that he has been brought in as a special
14 manager for Mr. Picarella. Mr. Picarella wasn't in his group.
15 Ms. Jenner was but, again, they don't want Mr. Picarella
16 reporting to someone who is obviously a junior person. So now
17 Mr. Karam is his manager.

18 They meet on November 21, 2014 here a few days before
19 the Thanksgiving holiday. And Mr. Karam gives Mr. Picarella
20 his -- either 2013 year-end review or 2014 mid year review,
21 we'll have to look at it and get to it. But he rates him off
22 track.

23 They don't have a very good meeting. Mr. Picarella's
24 testimony is that Mr. Karam was hostile to him; that he
25 threatened him; that he leaned over the table right in his

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1 face; that he pointed his finger in his chest. He felt
2 threatened enough to go down to human resources and say this
3 man just threatened me in my review.

4 He gets this negative review. And Mr. Picarella calls
5 human resources and complains about it. It's the 21st or so
6 of November. He works -- there are two or three more days
7 before the Thanksgiving holiday. And on December 1, the Monday
8 after that Thanksgiving holiday, he arrives at the office to
9 work. He's locked out. His pass has been disabled. And he --
10 employees streaming in the building. He can't get in. He's
11 locked out.

12 Human resources had sent him an e-mail. This is
13 Thanksgiving weekend. The testimony will be that he had left a
14 little bit earlier with his family to take one of the kids to a
15 hockey tournament. The testimony will be that HSBC had sent an
16 e-mail to him about 4:50 on the Friday afternoon before
17 Thanksgiving saying we've got your complaint about Mr. Karam.
18 For your own safety you should work from home and not come to
19 the building. So that works out. He can't get in. He calls
20 up. They say you -- we want you to work from home because of
21 this complaint. He never, ever goes back to work until he's
22 fired on March 27, 2015 for what you're about to hear.

23 So he's put on -- he's told to work from home now on
24 December 1. There is this -- he doesn't get access to the
25 systems again until the 18th of December. Could have been a

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1 glitch. But his access to the office systems and all, his
2 BlackBerry and all are turned off. He gets that on the 18th
3 of December. Holiday season. Returns to work early January.
4 He returns to work at home. He's working from home now because
5 he's out of the building. So he returns to duty in early
6 January.

7 On the 12th there's the sales meeting I told you
8 about. He attends by phone. The 20 or so more senior
9 executives around the United States attend this meeting.
10 There's some discussion about this meeting about some earlier
11 article in the New York Post about what some banker who had
12 done something questionable. You'll see it. But anyway the
13 executives of that meeting considered that discussion
14 confidential and private, which it likely was. Mike attends by
15 phone.

16 The next day the New York Post reporter calls the head
17 of that meeting and says I heard you had a meeting yesterday
18 and you talked about A, B, and C, and D. Rightly so that
19 executive was alarmed that this information had leaked out from
20 that meeting, calls human resources said what's going on. And
21 two days later -- I think you'll see it's two days later --
22 they accuse Mr. Picarella of having leaked that information.
23 No evidence whatsoever. You'll see the letter. The letter is
24 actually written by a lawyer for HSBC who says we have reason
25 to believe that you leaked this information.

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1 Accusing an executive in the financial services
2 industry, we will argue to you when the case ends, is a pretty
3 serious thing. Because the confidentiality of this financial
4 information is a serious thing. So he's accused of being a
5 leaker. And he now no longer works from home because he's now
6 completely shut out of the HSBC system. So from December 1
7 until roughly the time he was fired he never works again.

8 HSBC investigates this allegation. And he's
9 completely off the system. Then on March 27 of -- I think
10 March 27 is right -- of 2015 he's at home, picks up his son to
11 go to a hockey game or something. They're in the driveway.
12 The son sees a package on the front door, thinks it's a bar
13 mitzvah invitation and he jumps out of the car and he goes over
14 to get the package. And the package is not -- it's a package
15 from HSBC. He opens it. It's a letter terminating his
16 employment. He hands it to his father. He's fired on that
17 day. And that's why we end up here.

18 During the course of these events in 2013
19 Mr. Picarella filed a charge with the Equal Employment
20 Opportunity Commission. It's called a charge of
21 discrimination. Retaliation is a form of discrimination. He's
22 still there. He's still working. At least these federal
23 filings are confidential not made public. He files that, the
24 charge of discrimination. Nothing happens.

25 He continues to get retaliated against. That EEOC

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1 charge is a form of protected activity. Retaliation follows
2 it. It's unlawful. The Court will give you those instructions
3 and, of course, you will follow the Judge's instructions and
4 not my description of it.

5 But, about a year later he files this case. In 2014,
6 the fall of 2014 he then files this case here under federal
7 law, New York state law, and New York city law alleging
8 retaliation in violation of those statutes. And that's what
9 brings us here.

10 The last thing that you'll be asked to decide in this
11 case in the event you determine that the law was violated and
12 Mr. Picarella was unlawfully retaliated against, you'll be
13 asked to determine if he suffered damages as a result of that
14 termination and, if so, what the amount of those damages is.

15 You will learn from the evidence that Mr. Picarella
16 was in the financial services industry for 45 -- for 25 years
17 before he was fired; that his compensation at HSB was
18 approximately \$282,000; that the position, Ms. Hedges'
19 compensation was about \$500,000, the job he was supposed to
20 step into. And you will learn that he has sent job
21 applications all over the place looking for a job in this
22 industry and, based upon what happened to him, has not been
23 able to be re-employed in the industry.

24 You'll hear that he has interviewed for some jobs.
25 He's interviewed for some jobs in accounting departments, in

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1 the villages out on Long Island where he lives. But so far the
2 door to Wall Street, the evidence will say, has been shut.

3 There are other elements of damages you'll be asked to
4 consider such as emotional distress resulting from the conduct
5 that we say has destroyed a 25-year business career. And
6 you'll be asked to determine if he has suffered reputational
7 damages as a result of it.

8 The last thing you will be asked to decide if you
9 determine that he was unlawfully retaliated against is whether
10 or not you should award what are called exemplary or punitive
11 damages. They are damages to make an example. If you find
12 that the violation of the law -- if you find that the
13 retaliation that you see was a product of reckless disregard of
14 his rights under the law, or spite, or ill will, if you find
15 that, then you'll be permitted to make some judgment as to
16 whether punitive damages should be awarded to make an example
17 out of the defendant.

18 We look forward to presenting the case to you. Thank
19 you for your time.

20 THE COURT: Now we'll hear from defense counsel.
21 Defense counsel estimates his opening statement will be between
22 25 and 30 minutes.

23 Go ahead, please.

24 MR. JACKSON: Thank you, your Honor.

25 2014, mid year review of Michael Picarella. This is a

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1 review that was written by somebody you will see during the
2 course of this case had no motivation to retaliate against
3 Mr. Picarella. The person said that, and I quote: Mike has
4 demonstrated inconsistent results and is offtrack as of
5 mid year 2014. A common theme is one where Mike is illusive,
6 lacks initiative, and fails to take advantage of the
7 opportunities. Mike's lack of initiative, lack of
8 productivity, refusal to take ownership for strategically
9 defining his role or his work is contrary to his GCB level and
10 is significantly below the performance of his peers.

11 Now, ladies and gentlemen, if you have even a passive
12 level of familiarity with the way performance reviews are
13 conducted typically in corporations you will realize that the
14 words, the clarity and the harshness of the review of
15 Mr. Picarella, it's the type of language that is reserved only
16 for the very worst performers. And when you get a chance to
17 actually look at the evidence in this case and you get an
18 opportunity to actually hear from the witnesses it's going to
19 be clear to you that that's precisely what Mr. Picarella was,
20 one of the worst performers at his level in the bank and a
21 person who frankly failed to live up to professional standards
22 in pretty much every way that an employee could fail.

23 Now, the laws that are at issue that Mr. Hubbard just
24 alluded to, these laws are serious. These laws are extremely
25 serious. They're not a joke. They're not a game. There are

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1 laws that have been enacted in order to protect women,
2 vulnerable people, really all of us from what are
3 unquestionably some of the most unacceptable forms of work
4 harassment and work retaliation. The evidence in this case is
5 going to show, you will see, the evidence in this case is going
6 to show that Mr. Picarella is attempting to make a mockery of
7 these laws and it's unacceptable.

8 Now, Mr. Hubbard a moment ago said a number of things
9 about sexual harassment. And as he told you there is no real
10 dispute about whether sexual harassment in this case took
11 place. But that sexual harassment is not what this case is
12 really about. Because let me be just entirely clear. HSBC
13 took and continues to take any issues, any issues whatsoever
14 involving sexual harassment extraordinarily seriously. That's
15 going to be clear to you when you see how professionally the
16 responses were handled to everything that Mr. Picarella raised
17 and to any other issues that HSBC came across with regard to
18 sexual harassment. It's going to be clear to you that HSBC
19 found sexual harassment in its workplace to be unacceptable.
20 But that's not really what this case is about.

21 This case is about three things: Greed, opportunism
22 and exceptional laziness.

23 Greed, opportunism and exceptional, astounding
24 laziness.

25 And I want to talk about each one of those three

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1 things in the short time that I'm going to talk to you today
2 and about how they relate to the evidence that you're going to
3 see during the course of this case.

4 Let me take one brief moment to reintroduce myself
5 because I know it was quick. My name is Randall Jackson.
6 Along with my colleagues, we have the privilege, we have the
7 responsibility of representing HSBC.

8 We know that jury service is hard. We know that it's
9 an imposition. We deeply appreciate your attention and we
10 deeply appreciate your jury service.

11 Now, I want to talk first about the -- one of the
12 three things that I talked about which is laziness. And
13 Mr. Hubbard, in describing the details of what he said happened
14 at HSBC, he told a very nice tale, okay. It's a very nice, a
15 very neat tale that supports the idea of retaliation. But the
16 reality of the situation that you're going to see unfold
17 through the evidence, I promise you, is quite different. You
18 cannot understand, you absolutely cannot understand the
19 astounding story of Mr. Picarella's time at HSBC without
20 understanding first that Mr. Picarella was extraordinarily
21 lazy.

22 Now, the evidence is going to show that in 2011
23 Mr. Picarella came to HSBC after having worked at two prior
24 banks. In May of 2011 Mr. Picarella was hired as a senior
25 vice-president in sales management in the business markets

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1 group.

2 And ladies and gentlemen, he was hired at an initial
3 starting salary of \$225,000 per year with the possibility of
4 getting an additional bonus over that. There was no bonus
5 promised but he was told he had a possibility of getting a
6 bonus on top of that.

7 This was a senior level position and it required
8 Mr. Picarella to perform at an executive level, handle a number
9 of different complex responsibilities, executive senior
10 functions in connection with HSBC's work on behalf of its
11 customers.

12 The evidence is going to show that almost immediately
13 after Mr. Picarella got there problems started to surface with
14 him. Within months of his being hired complaints about
15 Mr. Picarella were coming in from a number of different parts
16 of the bank. Complaints were coming from supervisors.
17 Complaints were coming from his coworkers. People were
18 complaining about all three aspects of what I'll refer to as
19 the Picarella work experience.

20 People were complaining that his work product was not
21 up to standards; that his communication with others at work,
22 his communication with his colleagues was not up to appropriate
23 professional standards. And people were complaining that
24 probably most importantly his attitude about almost everything
25 at work was just poor. His attitude about the work that he was

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1 asked to do, his attitude about the way that he dealt with his
2 colleagues was just poor.

3 And I wish -- I deeply wish that I could tell you that
4 over the years that followed that Mr. Picarella was working at
5 HSBC that he improved. But he didn't. The evidence is going
6 to show that Mr. Picarella was given every opportunity by HSBC
7 to become a better worker. Every opportunity. He was given
8 numerous chances to improve the way he worked. But he
9 approached every opportunity he was given with the same poor
10 work product, poor collegiality and just poor attitude that he
11 had started with.

12 The evidence is going to show that HSBC assigned
13 several different supervisors to Mr. Picarella over the time
14 that he was working there. And these different supervisors
15 were assigned to him in order to make sure that he would have
16 an opportunity with fresh people to try to do his job. They
17 were given to him in the hopes that somebody would be able to
18 motivate him to do the thing that he was hired to do. And
19 you're going to see that they all failed. All of those
20 supervisors failed. They all found that he was continuing to
21 engage in the same type of functions that he started with that
22 led to -- that was his poor performance.

23 Now, I want to take a look at DX-258. And as we're
24 calling up DX -- what will later be DX-258 let me just point
25 out also that one of the things that happened to Mr. Picarella

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1 is that he actually refused to do a number of assignments that
2 were given to him over the years that he was working there.
3 And another thing that happened is Mr. Picarella simply failed
4 to show up a lot of the time. He was just absent from his
5 desk. People were constantly asking: Where is Michael
6 Picarella? Where is he?

7 You're going to see some of the people in his job,
8 some of his coworkers referred to him as Where's Waldo.

9 This is DX-258. You look at DX-258. The relevant
10 point, this was from Mr. Picarella's 2013 year-end review.
11 Mike has demonstrated a weakness in proactively devising
12 meaningful solutions to tasks which has required intervention
13 and guidance that should not have been necessary. Mike's
14 overall handling of these responsibilities has fallen short of
15 those typically expected of an SVP in the COO/business
16 management role.

17 Let's also take a quick look at what will be marked as
18 DX-232. This is from Mr. Picarella's own EEOC complaint, the
19 very complaint that Mr. Hubbard was talking about a moment ago.
20 And there is a portion in this where he says by year end 2011
21 when I met with Hedges for my performance review, that's his
22 supervisor you're talking about, she told me that Pizzimbono
23 and Suzy White, who was COO of Global Markets America, did not
24 think highly of me and that it might be a good idea if I looked
25 for another job. I had been employed at the bank at that time

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1 for only six months and Hedges was telling me to do what's best
2 for you and your family.

3 Now you can take that down.

4 Why is this important? Because this is Mr. Picarella
5 in his own words saying that only a few months, only six months
6 after he got there his supervisors were already telling him
7 that his work was bad, you need to start looking for another
8 job bad. And this is before he had made any complaints
9 relating to sexual harassment.

10 So the idea that there was retaliation, that this was
11 some made-up reason that he was ultimately fired is not going
12 to match up with the evidence that you're actually going to see
13 and the testimony that you're actually going to see from the
14 witnesses here. It's not going to match up at all.

15 What you're going to see is there are just conspiracy
16 theories on top of conspiracy theories and no real evidence of
17 any retaliation.

18 What you're going to see is that Mr. Picarella was
19 given repeated second chances, third chance, and fourth chances
20 by HSBC until finally in 2015 the bank finally made the
21 decision that they had to let him go. Okay. After years of
22 him not doing his job. And this was done for one reason. And
23 it was done for one reason only. And that's because
24 Mr. Picarella was not doing his job and he hadn't done his job
25 for a very long time.

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1 Now, you may be asking yourself: Given the fact that
2 there is not going to be any real evidence of retaliation,
3 given the fact that people were saying his performance was
4 terrible before he made any complaints, why are we even here?
5 That's a good question. And it brings me to the second point
6 of what this trial is really going to be about. What you're
7 going to see unfold through the evidence. And it's
8 opportunism.

9 Now, there is no dispute, there is no dispute, as
10 Mr. Hubbard was alluding to that there's certain HSBC employees
11 that didn't behave appropriately with regard to the young woman
12 that Mr. Hubbard was talking about. And the fact of the matter
13 is HSBC has taken full responsibility for that. HSBC has taken
14 full responsibility for that. Does not condone sexual
15 harassment. Some of the details of the number of that, I think
16 Mr. Hubbard's account is not quite accurate. But the point is
17 there is no dispute about it. And HSBC has dealt with that
18 appropriately, completely separately from anything having to do
19 with this case.

20 Now, nevertheless, you're going to see in early 2012
21 after Mr. Picarella had been told by his supervisors that his
22 job was already on the line, Mr. Picarella started thinking
23 about what he could do to preserve his job. At some point in
24 early 2012 Mr. Picarella went to human resources and made a
25 complaint about his boss, the woman we referred to earlier,

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1 Eileen Hedges. And he made a complaint about her. He was
2 complaining essentially about her treatment of him. And you're
3 going to see that in the complaint one of the things that he
4 was complaining about, in fact, was the very woman, Ms. Parker,
5 that he later on would claim to be the white knight for in
6 terms of his complaints that he claims are the subject of
7 retaliation, he was complaining about the fact that he was
8 forced to endure the conversations between the two of them.
9 And this is important because what didn't happen in early 2012
10 when Mr. Picarella made these complaints is he did not say
11 anything at that time about the sexual harassment of
12 Ms. Parker. Nothing at all. You're going to see when you
13 actually see the evidence that in those early meetings, in
14 those early meetings in 2012 that was not what Mr. Picarella
15 was talking about. However, at some point later in 2012 after
16 Mr. Picarella had a long time to think about it, much later in
17 the year, after he had a long time to think about it and after
18 he had the opportunity to consult with lawyers, Mr. Picarella
19 finally made a complaint that related to some sexual harassment
20 that he had heard about third hand.

21 Now, the evidence is going to show Mr. Picarella is
22 not -- was not a close friend of Ms. Parker's. He wasn't her
23 confidant at work. In fact, the evidence is going to show that
24 she is one of the people who was complaining about his near
25 constant invisibility in the office and one of the people who

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1 was complaining about his poor work, about the fact that he
2 wasn't doing his job. She was one of a chorus of people who
3 was asking: Where is Michael Picarella during the workday?

4 Nevertheless, this is the complaint that Mr. Picarella
5 made. And the answer, by the way, to where is he, is that he
6 was anywhere other than doing his job. Sometimes he was doing
7 personal things. Sometimes he was doing -- no one knows what.
8 But the point is what we do know is that at some point in late
9 2012 he was in HR and that was part of a plan for him to
10 benefit based on the misfortune that he observed from someone
11 else.

12 Now, ladies and gentlemen that is plain and simple
13 what is known as opportunism. It's attempting to take
14 advantage of someone else's unfortunate situation in order to
15 benefit yourself. And I think when you see the evidence it's
16 going to be very clear that this entire case is a particularly
17 sad and cynical example of opportunism.

18 You may be asking yourselves: Why would he do that?
19 Well he wanted to save his own job. And because he also viewed
20 making the complaint, taking advantage of another person's
21 misfortune as a way to get a lottery ticket and perhaps some
22 day get a jackpot from this jury.

23 And that brings me to the third thing that I said this
24 case is really about. The third thing that this case is really
25 about that you will see unfold from the evidence and that is

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1 just greed. Because once you put aside Mr. Picarella's poor
2 work habits, once you put aside his poor collegiality, once you
3 put aside his opportunism, this case is, more than anything,
4 just about pure unadulterated greed. And you're going to see,
5 as you look through the evidence, that Mr. Picarella is
6 attempting to suggest that the bank engaged in retaliation
7 against him after it learned that he had made a complaint about
8 the sexual harassment of this young woman.

9 Well, this is not true. It's not true at all. It's
10 not going to match up with the evidence. You're going to see
11 that when Mr. Picarella made his complaints, and his complaints
12 were many, the bank took essentially two steps. First, the
13 bank conducted a very thorough, a very thorough and
14 exceptionally professional investigation of everything that
15 Mr. Picarella had complained about and things that other people
16 said and talked to everyone. And you're also going to learn
17 that, in connection with that, the bank, as Mr. Hubbard has
18 already talked about, ultimately dismissed the one person
19 who -- one of the employees that it determined was -- had
20 behaved inappropriately.

21 This was a responsible investigation. This was a bank
22 that was dedicated to making sure that sexual harassment didn't
23 take place. And when you see the professionalism of the
24 investigation it's going to be clear that this was not
25 retaliation.

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Opening - Mr. Jackson

1 The second thing that the bank did, and I've alluded a
2 little bit to this, but they assigned Mr. Picarella to new
3 supervisors. They took him away from the person that he
4 claimed initially on he felt was treating him inappropriately.
5 And this is really important because HSBC was making a very
6 genuine attempt to get Mr. Picarella a new start. They
7 assigned him to multiple different supervisors. And they all
8 found that Mr. Picarella still was refusing to do his job.

9 Now, this gets to -- gets us to probably the biggest
10 problem with Mr. Picarella's case. Because when you hear about
11 all the new supervisors you may be thinking how long was he
12 working there? The evidence is going to show that
13 Mr. Picarella continued to work at HSBC for years after he made
14 his initial complaints. Okay. And he collected years worth of
15 paychecks. And if you look at what those paychecks added up
16 to, you will see that Mr. Picarella collected over a million
17 dollars in salary from HSBC during the time period that he was
18 working there and the vast majority of that money, almost all
19 of it, was collected after he made his complaints about sexual
20 harassment.

21 (Continued on next page)

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23
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25

GB5TPIC3

Opening - Mr. Jackson

1 MR. JACKSON: Now that is, you will see, completely
2 inconsistent with any common sense or logical notion of how
3 retaliation works. It will not make sense to you when you
4 actually look at the timing of what happened. You actually
5 look at what happened, that the bank elected to pay him a small
6 fortune after he was making his complaints, and he claims that
7 was some form of retaliation. When you get chance to look at
8 all that it will be obvious to you that his claims are
9 completely disconnected from the law and completely
10 disconnected from reality.

11 Now I'm coming close to the end, but let me say a
12 couple of things about the law that I think you should take
13 into consideration. There are federal and local statutes at
14 issue in this case, as Mr. Hubbard talked about. And Judge
15 Carter will give you much more detailed instructions later on
16 the case and all will be explained to you, but the important
17 point is Mr. Picarella has the burden in this case. He has the
18 burden at all times, and he has the burden of demonstrating
19 that an adverse employment action in retaliation for the
20 complaint that he made about Ms. Parker was the reason that he
21 experienced those adverse employment actions.

22 He has to demonstrate retaliatory adverse employment
23 action. And there are really two that he is focused on. One
24 is this failure to promote him to managing director that he
25 talked about, this position involving Ms. Jenner, and the other

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Opening - Mr. Jackson

1 one is his termination in 2015.

2 When you actually look at what happened and see all
3 the evidence, it will be obvious to you that the idea that
4 these were retaliatory adverse employment actions, it's just a
5 complete lie. It's a complete lie. It's false.

6 When you look at, just first in terms of the
7 promotion, what happened with regard to Ms. Jenner, you will
8 hear from other witnesses and see her performance evaluation,
9 this woman was one of the most respected employees at the
10 entire bank. She was a person who was universally respected
11 for her hard work, for her collegiality, for all the things
12 that she did, her businesses skills. And in contrast with
13 Mr. Picarella, there was no real comparison between them. This
14 is the woman that he is going to allege he should have had her
15 job, and it's not going make sense. The whole story of how
16 Ms. Jenner gets the promotion has nothing to do with
17 retaliation, and he's not going to be able to establish
18 anything that is even going to suggest that it is a retaliatory
19 thing. He is not going to meet his burden.

20 The second piece is termination. Again, his
21 termination happened years after he made his complaint because
22 of the issue in this case and after he collected an enormous
23 amount of money from HSBC. When you actually look at that and
24 look at everything that led up to his termination, it will be
25 clear to you this is just another attempt by Mr. Picarella to

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Opening - Mr. Jackson

1 get another payday. His termination and the reasons for it are
2 a million light years away from any retaliatory motive, and
3 that will be completely clear when you examine that and hear
4 from Judge Carter how you're supposed to apply the law in this
5 case.

6 So I want to wrap up. I just want to say I know it's
7 been a long day and a long afternoon, but this is difficult.
8 As the judge said, jury service is one of the most important
9 things that you can do as a juror, but it's also one of the
10 most difficult. It's hard to focus on that and engage in a
11 problem that you haven't engaged in before.

12 But the laws that are at issue here in this case, as I
13 said before, are incredibly important. They are incredibly
14 important, and we take them extremely seriously. And we ask
15 you to take them extremely seriously during this case, because
16 these are laws that are designed to protect people.

17 The evidence is going to show Mr. Picarella is
18 attempting to make a mockery of these laws. He's attempting to
19 mislead this jury about what happened for his own personal
20 benefit. So at the end of the case when we come back and walk
21 through all the evidence and talk about how it demonstrates
22 what the appropriate verdict is, I'm going to ask you to return
23 a verdict: No liability against HSBC. It's going to be the
24 only verdict that actually matches up with the evidence.

25 Until that time, I just ask you to do three things:

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1 Pay close attention to evidence, listen to Judge Carter's
2 instructions throughout the case, and at the end of the case
3 use your own common sense. Please your own common sense
4 throughout the case. Don't put that aside when you walk
5 through the metal detectors and come into this courthouse.

6 If you do those three things, use your own common
7 sense, follow the judge's instructions and listen closely to
8 the evidence, you are going to come away with the only verdict
9 that is going to be consistent with the evidence and consistent
10 with the law, and that is a verdict of no liability in favor of
11 HSBC.

12 Thank you very much for your attention.

13 THE COURT: Let's do this, let's take a quick
14 twelve-minute break and then we will have the first witness.
15 Don't discuss the case among yourselves or with anyone else and
16 I'll see you in twelve minutes.

17 MR. HUBBARD: Your Honor, we have to unpack some of
18 our stuff, but I think we can do it in twelve minutes.

19 Your Honor, could we have a moment with you?

20 (Jury not present)

21 (Continued on next page)

GB5TPIC3

1 THE COURT: Okay.

2 MR. HUBBARD: Your Honor, I'm not encouraged in what I
3 see from counsel in that opening statement. It was severe
4 argument. It was largely, in my view, argument, and I want to
5 complain about it. I didn't object to it because I'm not going
6 to interrupt in front of the jury, but it was heavy, heavy
7 argument. Number two, he virtually accused opposing counsel of
8 lying to the jury. Number three, he used evidence in his
9 argument that the Court has ruled inadmissible at this point in
10 time in the case. So I'm concerned that the rules that we live
11 by here are not being followed by the defendant.

12 THE COURT: Okay.

13 MR. JACKSON: May I respond?

14 THE COURT: Are you asking me to do anything at this
15 point?

16 MR. HUBBARD: No, sir.

17 THE COURT: Okay. Anything from defense counsel?

18 MR. JACKSON: No, your Honor. We disagree.

19 THE COURT: All right. See you soon.

20 (Recess taken)

21 (Continued on next page)

GB5TPIC3

Picarella - direct

1 (Jury present)

2 THE COURT: We're ready to proceed with the first
3 witness. Plaintiff please call your first witness.

4 MR. HUBBARD: The plaintiff, Mr. Picarella, your
5 Honor.

6 MICHAEL PICARELLA,

7 called as a witness by the Plaintiff,

8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. HUBBARD:

11 Q. Mr. Picarella, give us your full name, please, and tell us
12 where you reside.

13 A. My name is Michael Picarella. I live at 221 Barton Avenue,
14 Melville, New York.

15 Q. Are you married?

16 A. Yes.

17 THE COURT: Hold on just a second. Make sure you lean
18 into the microphone.

19 Can the jurors all hear?

20 Okay.

21 MR. HUBBARD: Thank you, your Honor.

22 BY MR. HUBBARD:

23 Q. Are you married?

24 A. Yes.

25 Q. What are the ages of your children?

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Picarella - direct

1 A. I have twin daughters that are 17, I have a boy that is 14
2 and a boy that's 12.

3 Q. Can you tell us briefly where you grew up and the secondary
4 school.

5 A. Sure. I grew up in Levittown, Long Island, and I graduated
6 in 1984 from Levittown Division Avenue High School.

7 Q. Give us the benefit of your educational background after
8 you graduated from high school.

9 A. I attended Hofstra University, graduating in 1989 with a
10 bachelor's in business administration. I also have an MBA from
11 Fordham University and graduated in 1995.

12 Q. Did there come a time when you began working in the
13 financial services industry?

14 A. Yes. Shortly after graduating from Hofstra University in
15 1989 I joined Morgan Stanley. I worked there for 13 years in
16 operations management as a vice president.

17 Q. Did you obtain your MBA while working at Morgan Stanley?

18 A. Yes, I did.

19 Q. Did there come a time when you left Morgan Stanley for
20 other employment?

21 A. Yes.

22 Q. When was that?

23 A. In 2003 I left as part of the firm-wide reduction in force.
24 I joined Deutsche Bank as a vice president in information
25 technology.

GB5TPIC3

Picarella - direct

1 Q. That was in 2003?

2 A. 2003.

3 Q. And how long were you there?

4 A. I was there for one year and I was recruited by Lehman
5 Brothers.

6 Q. Let me ask the questions.

7 A. Sorry.

8 Q. One at a time.

9 What happened next?

10 A. I was recruited by Lehman Brothers.

11 Q. When was that?

12 A. That was in 2004.

13 Q. Did you join Lehman Brothers?

14 A. Yes, I did.

15 Q. In what position?

16 A. I joined as a vice president. I was global head of fixed
17 income product management.

18 Q. May I ask you to give us a very short description of what
19 fixed income product management is, please.

20 A. Sure. Prime brokerage and fixed income prime brokerage is
21 financing of large institutional clients, including hedge
22 funds. We provide many services in addition to financing,
23 trade execution, clearance and settlement, basically the back
24 office for execution and reporting.

25 Q. How long were you at Lehman Brothers?

GB5TPIC3

Picarella - direct

1 A. I was at Lehman Brothers until 2008 until Lehman went
2 bankrupt as a result of the 2008 financial crisis.

3 Q. What happened to the Lehman work force?

4 A. We merged immediately with Barclays Capital Group bought
5 Lehman Brothers a couple days after the bankruptcy.

6 Q. Can you tell us if you remained at Barclays?

7 A. Yes, I did.

8 Q. What was your position at Barclays?

9 A. I was vice president, head of U.S. fixed income prime
10 brokerage until 2011.

11 Q. So looks like you had the same job there, except this was
12 U.S. and the other was global.

13 A. Yes.

14 Q. How long did you work at Barclays?

15 A. It was a little over two years until January 2011.

16 Q. What, if anything, happened at that time?

17 A. I was let go as a firm-wide reduction in force as a result
18 of the merger of the two companies.

19 Q. How did you come to go to work at HSBC?

20 A. I was recruited by a head hunter that was employed by HSBC.

21 Q. What was the head hunter's name?

22 A. Kevin Freer.

23 Q. Do you know the name of his firm?

24 A. I believe it was Mitchell Martin.

25 Q. Do you know how they got your résumé?

GB5TPIC3

Picarella - direct

1 A. No, I don't.

2 Q. Did you interview at HSBC in the spring of 2011?

3 A. I did.

4 Q. Do you recall who interviewed you?

5 A. Yes.

6 Q. Who was it?

7 A. Eileen Hedges, Mark Baker, Ian Mullen, Ellen Weiss, and
8 Pablo Pizzimbono.

9 Q. What part of the bank were these executives employed in
10 when they interviewed you?

11 A. Global banking and markets of the Americas.

12 Q. When you say for the Americas, can you tell us what
13 region -- probably self-explanatory, but what area of the world
14 is that?

15 A. North America, which was U.S. and Canada, and Latin
16 America.

17 Q. What were the titles of these folks that interviewed you?

18 Ms. Hedges, what was her title?

19 A. She was a senior vice president. Mark Baker was a managing
20 director. Ian Mullen was a managing director. Ellen Weiss was
21 a senior vice president, and Pablo Pizzimbono was a managing
22 director.

23 Q. What positions did they hold at that time?

24 A. Eileen Hedges was head of business development for the
25 Americas. Mark Baker was in charge of client development. Ian

GB5TPIC3

Picarella - direct

1 Mullen was COO for markets in the Americas.

2 Q. You say COO, tell us what that means.

3 A. Chief operating officer.

4 Q. Okay.

5 A. Ellen Weiss was head of human resources for markets, and

6 Pablo Pizzimbono was head of sales for the Americas.

7 Q. You mentioned that you were in this global markets sales
8 area, what type of sales are we talking about? Just give us a
9 brief description of the type of sales we're talking about.

10 A. Products that we sold were, just to keep it simple, bonds
11 and stocks, foreign exchange products.

12 Q. Do you recall the reporting relationship among

13 Mr. Pizzimbono, Mr. Mullen, Ms. Hedges?

14 A. Yes. Ms. Hedges reported in to Mr. Pizzimbono and
15 Mr. Mullen. Mr. Pizzimbono and Mr. Mullen reported in to
16 Didier Descamps, who was the head of global markets for the
17 Americas. Mark Baker also reported into Pablo Pizzimbono. And
18 Ellen Weiss was in human resources, which is a separate group.

19 Q. Tell us again the position that Mr. Pizzimbono held.

20 A. He was head of sales for the Americas.

21 Q. Was Suzanne White at that time in this organizational
22 structure?

23 A. Yes.

24 Q. What was her position?

25 A. She was deputy COO or chief operating officer reporting in

GB5TPIC3

Picarella - direct

1 to Ian Mullen.

2 Q. Take a moment now, Mr. Picarella, and show you on the
3 screen --

4 MR. HUBBARD: Peter, do you have this?

5 Q. Show you a demonstrative exhibit that we have used, a chart
6 that tried to simplify it a little bit, but what is -- it says
7 January 2011. What organization does this reflect here,
8 Mr. Picarella?

9 A. That's the senior management for global markets Americas.

10 Q. And the two gentlemen at the top are the co-heads of global
11 markets?

12 A. Yes, Didier Descamps.

13 Q. Who is beneath -- Mr. Descamps is shown as co-head of
14 global markets Americas?

15 A. Yes.

16 Q. What is Mr. Mullen shown as, please?

17 A. He is shown as the chief operating officer for global
18 markets Americas reporting in to Mr. Descamps.

19 Q. Let's go a couple of pages over to where Mr. Mullen is in
20 the middle.

21 What does this chart depict?

22 A. This is the global markets Americas COO/business management
23 organizational chart.

24 Q. What does it show?

25 Does it show Ms. White on the chart?

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Picarella - direct

1 A. Yes, it does, just to the left of Mr. Mullen.

2 Q. It shows her as deputy COO?

3 A. Correct.

4 Q. Is Mr. Karam on this chart?

5 A. Yes, he is. He is underneath the business managers over
6 there in metals. He was a business manager in metals.

7 Q. Looks like there are several business managers on this
8 chart.

9 A. Yes.

10 Q. What were their jobs?

11 A. Their jobs were for each different business area or
12 product. They operated in the COO function for that particular
13 product or business area.

14 Q. When you say they operated in the COO function, what do you
15 mean by that?

16 A. The responsibilities were that of a COO.

17 Q. Meaning?

18 A. That their daily tasks were similar to what Mr. Mullen or
19 Ms. White would be conducting.

20 Q. What does the chief operating officer do?

21 A. He's in control -- there's many aspects to that job. He's
22 in control of ensuring that the markets organization is in
23 compliance with all external regulatory requirements, that
24 we're in charge of everything from costs -- what we call T and
25 E, travel and expense cost, is maintained within budget.

GB5TPIC3

Picarella - direct

1 They're in charge of basically allocating what employees are
2 getting paid by desk. They work with human resources to ensure
3 that compensation is paid. There's many aspects to the job,
4 it's a long list.

5 Q. You call them COO, chief operating officer, I guess in sum
6 it means operations.

7 A. Yeah, the operations of the business.

8 Q. Okay. Is Ms. Hedges on this chart?

9 A. Yes, she is, where it's being highlighted down below for
10 sales.

11 Q. What was her position?

12 A. She was head of business development for sales for the
13 Americas.

14 Q. And is Ms. Jenner on this chart, J-E-N-N-E-R?

15 A. Yes, she is, she's under wealth management.

16 Q. What is Ms. Hedges' title on this chart?

17 A. Vice president.

18 Q. Sorry, Ms. Hedges' title.

19 A. Sorry, Ms. Hedges is senior vice president.

20 Q. What is Ms. Jenner's title on this chart?

21 A. Vice president.

22 Q. You told us about Mr. Pizzimbono and Ms. Hedges in sales.

23 What is sales?

24 A. Sales is part of -- sales and trading within markets. So
25 for the products I had mentioned before, the sales team works

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Picarella - direct

1 generally with large institutional clients, governments, and
2 corporates, and they will have relationships with these
3 organizations that are managing assets. And those clients will
4 want to execute in the market, so they will use a salesman that
5 is covering them to go out into the market and execute the
6 sales staff, who will then work with the trading desks to put
7 that client order out into the market for an execution, and
8 when it's done it's relayed back to the salesperson.

9 Q. Are these two staffs, the sales staff and the trading
10 staff, are they at HSBC?

11 A. Yes, they are.

12 Q. Let's see if we can go through one more.

13 What is the department at the top left?

14 A. Global market sales.

15 Q. So this is a sales operation?

16 A. This is a sales.

17 Q. Who is shown at the top?

18 A. Mr. Pizzimbono.

19 Q. And is Ms. Hedges on this chart?

20 A. Yes, she is, under business development.

21 Q. She's shown as the head of business development.

22 A. Yes.

23 Q. Does this fairly depict the organization of the sales,
24 global market sales, at HSBC in the spring of 2011 when you
25 were interviewing with the department?

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Picarella - direct

1 A. Yes, it does.

2 Q. When you were being interviewed, did you learn whether or
3 not you were being interviewed for any specific position?

4 A. Yes.

5 Q. What was it?

6 A. The position was for deputy head of business development in
7 Americas reporting in to Eileen Hedges.

8 Q. So down near the block that we're looking at?

9 A. Yes.

10 Q. And was there any discussion from the offices you were
11 interviewing with about succeeding Ms. Hedges when she moved to
12 a new job?

13 A. Yes.

14 Q. What were you told?

15 MR. JACKSON: Objection, your Honor.

16 THE COURT: Basis?

17 MR. JACKSON: Hearsay.

18 THE COURT: Overruled. Go ahead.

19 A. Primarily from Ms. Hedges and Mr. Mullen that Ms. Hedges
20 would be moving into a new role in the organization, and that I
21 was being hired to succeed her.

22 Q. Were you interviewed at any other Wall Street firms at the
23 time that you were interviewing with HSBC in the spring of
24 2011?

25 A. Yes.

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Picarella - direct

1 Q. Which ones?

2 A. UBS.

3 Q. What was the status of your interviews at UBS when you
4 interviewed at HSBC?

5 A. I was offered a job at UBS for director in their capital
6 markets division.

7 MR. HUBBARD: Peter, may we have PX 304, please.

8 Q. You have an exhibit book there, Mr. Picarella, it's kind of
9 hard to see on that screen.

10 Exhibit 304, in the third volume.

11 A. Got it.

12 Q. Take a look at the top, and what position -- what is the
13 date of this letter, Mr. Picarella?

14 A. April 13, 2011.

15 Q. What position were you being offered?

16 A. Senior vice president in sales management department
17 reporting to Eileen Hedges.

18 Q. Does it show the title that you received?

19 A. Yes, title was senior vice president.

20 Q. What does it say about your compensation?

21 A. That my base salary would be \$225,000 a year.

22 Q. Is there any provision down below that? Is there any
23 reference to that?

24 What were you -- were you eligible under this letter
25 to receive a discretionary bonus?

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Picarella - direct

1 A. Yes.

2 Q. And what were you told about -- by Ms. Hedges and others
3 about what that bonus would be?

4 A. I was told the bonus would be in the 150,000 range to match
5 what was offered by UBS.

6 Q. Was that amount guaranteed?

7 A. No, it was a handshake.

8 MR. JACKSON: We have no objection, but this should
9 probably be offered.

10 THE COURT: Are you offering this?

11 MR. HUBBARD: Yes, your Honor. I guess I sort of
12 thought that there was no objection.

13 THE COURT: Hold on. The previous documents, can we
14 list those, and are you offering those into evidence?

15 MR. HUBBARD: Not the first one. The first one was a
16 demonstrative exhibit, but I move the admission of 304.

17 MR. JACKSON: No objection.

18 THE COURT: It's in.

19 (Plaintiff's Exhibit 304 received in evidence)

20 MR. HUBBARD: May we see Plaintiff's 249, please.

21 BY MR. HUBBARD:

22 Q. Do you have 249 in your book, Mr. Picarella?

23 A. Yes, I do.

24 Q. What is Exhibit 249, Mr. Picarella?

25 A. This is a role profile form.

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Picarella - direct

1 THE COURT: And are you offering 249?

2 MR. HUBBARD: Yes, your Honor.

3 THE COURT: Any objection?

4 MR. JACKSON: No objection, your Honor.

5 THE COURT: It's in.

6 (Plaintiff's Exhibit 249 received in evidence)

7 Q. What is 249?

8 A. It is a role profile form.

9 Q. And what is the business?

10 A. Global market sales management.

11 Q. What is the date?

12 A. May 5, 2011.

13 Q. Is this role profile for you?

14 A. Yes, it is.

15 Q. What is the role title?

16 A. Senior vice president.

17 Q. Does it show your supervisor?

18 A. Yes, it does.

19 Q. Does it show her title or position?

20 A. Yes, it does.

21 Q. There seems to be a section there that reads role purpose
22 deputy-business development. Do you see that?

23 A. Yes.

24 Q. Can you read us the description of that position?

25 A. Sure. Responsible for developing relationships with sales,

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Picarella - direct

1 credit, relationship managers and senior management. Promote
2 strategic client alignment to maximize profitability by
3 analyzing management information for global markets customer
4 base to ensure priority clients fit within developed models.

5 Q. If you look down beneath the top portion there's a section
6 called principal accountabilities.

7 Do you see that, Mr. Picarella?

8 A. Yes, I do.

9 Q. What were these accountabilities?

10 A. This is basically some but not all of our primary
11 responsibilities.

12 Q. Just to look at a couple of them real quick. There's a
13 note there about global markets commentary. What was that?

14 A. That was a monthly commentary basically highlighting
15 events -- sales revenue and big events that would take place on
16 either a weekly or monthly basis. We had a number of different
17 reports.

18 Q. The top said establish priority clients in U.S., Canada and
19 Latam. What was that?

20 A. They had a very large client base. There were strategic
21 clients that we would isolate and basically put client planning
22 around.

23 Q. There's a section toward the bottom that reads: On
24 boarding/off boarding clients. What does that mean?

25 A. Any new clients that wanted -- salespeople wanted to bring

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Picarella - direct

1 on to the firm, they had to go through a process and committee
2 that that was responsible for.

3 Q. There's section that reads GM BIRO. I guess that stands
4 for business information risk officer.

5 A. Correct.

6 Q. Did you have that position?

7 A. Yes, that was my responsibility.

8 Q. What was that responsibility?

9 A. It was basically to ensure integrity of information within
10 the organization, that there was no chance for leakage, and
11 that everybody was following proper protocol by desk to ensure
12 that all information was contained in the appropriate manner
13 within the firm.

14 Q. Was there any operational risk component to this job as
15 deputy head of business development?

16 A. Yeah, it was a part of it.

17 Q. So with this background can you summarize for us just
18 briefly what your principal job responsibilities were when you
19 joined in May of 2011 as deputy head of business development?

20 A. Yeah, some of the major ones were strategic client
21 planning, onboarding and exiting of clients, monitoring and
22 managing industry surveys, the business information risk
23 officer that you mentioned. We had a number of initiatives,
24 some of them were regulatory, like Project Topaz, which was
25 know your client, anti-money laundering, the Dodd-Frank

GB5TPIC3

Picarella - direct

1 regulations, and various reporting to senior management in the
2 organization for global markets.

3 Q. Just briefly, Dodd-Frank regulations, we may not be
4 familiar with those. What type of regulations were they?

5 A. Well, they were related to derivative products and ensuring
6 that there were proper controls and clearance around
7 Dodd-Frank. It's a little complicated.

8 Q. How long were you employed by HSBC?

9 A. Approximately four years.

10 Q. How did your employment end?

11 A. I was terminated in March of 2015.

12 Q. These responsibilities you just described to us from the
13 exhibit and the ones you described to us in summary, how long
14 did you have these responsibilities at HSBC?

15 A. By the middle of 2013 almost all of them had been taken
16 away.

17 Q. Who was responsible for taking those responsibilities away
18 from you?

19 A. Initially Ms. White and Pizzimbono, and eventually
20 Mr. Karam when he became my supervisor.

21 Q. Did there come a time in 2012 when Ms. Hedges was relieved
22 of her management responsibilities?

23 A. Yes.

24 Q. Did you then succeed her?

25 A. I did not.

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Picarella - direct

1 Q. Who did?

2 A. Carol Jenner.

3 Q. Were you interviewed for the job?

4 A. No.

5 Q. When you joined HSBC, where was your office?

6 A. The headquarters at 452 Fifth Avenue in Manhattan.

7 Q. In the headquarters building where was your office?

8 A. I was on the 9th floor, trading floor. We had two trading
9 floors, 9th floor and 10th floor. I was on the 9th floor.

10 Q. How many employees were on that trading floor?

11 A. The 9th floor was the smaller of the two trading floors.
12 It was about 300 -- I would say about 300 employees on that
13 floor.

14 MR. HUBBARD: Do you have a demonstrative exhibit of
15 the trading floor, Mr. Fitzgerald.

16 Q. Let me show a picture. This is not an HSBC trading floor,
17 this is a picture from the internet.

18 A. Correct.

19 Q. Can you tell us whether or not this has a reasonable
20 relationship to the trading desk that you worked on?

21 A. Yes, very similar.

22 Q. How is it similar?

23 A. Well, the trading desks, we call them turrets, they weren't
24 like cubicles that separated employees, they were lines of
25 desks, and they would be sort of face to face. So this row of

GB5TPIC3

Picarella - direct

1 desks where this lady is sitting, right along the side is
2 another row of the desks facing, and there were usually --
3 those rows, those turrets were in line throughout the course of
4 trading floor. And typically you would have on perimeter of
5 the trading floor offices and conferences rooms.

6 Q. When you were set up there with Ms. Hedges and Ms. Parker,
7 were you set up in a similar setting?

8 A. Yes, I was. If we took the lady as an example where I was
9 sitting, to my right was Ms. Hedges and to my left was
10 Ms. Parker.

11 Q. Who did Ms. Parker report to?

12 A. She reported to Ms. Hedges.

13 Q. What kind of work did she do?

14 A. For the most part she supported Ms. Hedges and myself, but
15 she had some of her own responsibilities.

16 Q. I think we saw that she may have had the title "analyst."
17 Do you know what her actual work title was?

18 A. She was an analyst.

19 Q. And what was her age at the time that you joined in 2011,
20 if you know?

21 A. She was about 26 years old at that time.

22 Q. Do you know how long she had been at the bank when you
23 joined?

24 A. She was at the bank I want to say about three years, and in
25 business development about a year before I got there.

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Picarella - direct

1 MR. HUBBARD: Let me see Plaintiff's Exhibit 311,
2 please.

3 Q. What is the date on this organizational chart, please,
4 Mr. Picarella?

5 A. November 2011.

6 Q. The earlier one was January of 2011?

7 A. Correct.

8 Q. So is this again the global markets sales group in
9 November 2011?

10 A. Yes, that's correct.

11 Q. Does it show Mr. Pizzimbono?

12 A. Yes.

13 Q. Is Mr. Goodwin on this chart?

14 A. Yes, he is.

15 Q. What is his title?

16 A. Managing director. He ran the sales desk for the credit
17 product.

18 MR. HUBBARD: Let's go over about two pages, please.
19 I should offer this, your Honor, offer Plaintiff's
20 311?

21 THE COURT: Any objection?

22 MR. JACKSON: No objection.

23 THE COURT: Okay, it's in.

24 (Plaintiff's Exhibit 311 received in evidence)

25 Q. Are we looking at a chart that is entitled -- a section

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1 entitled wealth management and EQD sales?

2 A. Yes.

3 Q. And the date at the top is what?

4 A. November 2011.

5 Q. Who is the MD in the middle, head of wealth management
6 sales, please?

7 A. Todd Fruhbeis.

8 Q. Is Ms. Jenner on this chart?

9 A. Yes, she is.

10 Q. What does this say her job title is?

11 A. Business manager vice president.

12 Q. We go over a couple of pages, business development
13 Americas.

14 This page, Mr. Picarella, business development
15 Americas, is that your shop?

16 A. Yes, it was.

17 Q. Who does it show the head of business development Americas
18 is?

19 A. Eileen Hedges.

20 (Continued on next page)

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Picarella - direct

1 Q. And who is beneath that?

2 A. Myself and Ms. Parker.

3 Q. Does it show your title?

4 A. Yes, it does.

5 Q. Senior vice-president?

6 A. Yes.

7 Q. And then does it shows Ms. Parker?

8 A. Yes. Analyst.

9 Q. And did the two of you work for Ms. Hedges?

10 A. We did.

11 THE COURT: Hold on one second. Go ahead.

12 MR. HUBBARD: Give me Plaintiff's 19, please.

13 THE COURT: Are you offering 19?

14 MR. HUBBARD: Yes, your Honor.

15 THE COURT: Any objection?

16 MR. JACKSON: No objection.

17 THE COURT: Okay. It's in.

18 (Plaintiff's Exhibit 19 received in evidence)

19 MR. HUBBARD: I should offer it before I put it up on
20 the screen.

21 Q. What is Exhibit 19, Mr. Picarella?

22 A. That is my 2011 mid year review.

23 Q. If you look at the top of the document.

24 A. Yes.

25 Q. You have it there beside you as Exhibit 19 if you want to

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1 look at it in the hard copy.

2 MR. HUBBARD: Peter you need to highlight that. Can
3 you show us the top there?

4 THE COURT: Members of the Jury, if you need to move
5 around in the jury box to help you see that a little bit
6 better, feel free to do so. Okay.

7 Q. Do we now have it on the screen there, Mr. Picarella.

8 What is a global score card plus AR?

9 A. It's the title of the form they used for your reviews.
10 Mid year and year-end reviews.

11 Q. That was my question. Is this a performance review form?

12 A. Yes, it is.

13 Q. And this one is for mid year?

14 A. Mid year 2011.

15 Q. And it's a manager review?

16 A. Yes.

17 Q. Is there a date on it?

18 A. Yes. August 17, 2011.

19 Q. What is the review period? Is that reflected?

20 A. It reflects the first three months that I was working there
21 from May 5 -- even less. It was given to me in August but it
22 was just a couple months of time that I was there.

23 Q. So it's given to you in August of '11?

24 A. Yes.

25 Q. Who gave it to you?

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1 A. Ms. Hedges.

2 Q. What was the rating?

3 A. Three strong.

4 Q. There's a rating system at the firm. Is it a numerical
5 system?

6 A. Yes, it is.

7 Q. One, two, three, four, five?

8 A. One through five.

9 Q. What is one?

10 A. One is outstanding.

11 Q. What is two?

12 A. Two I believe is exceeds.

13 Q. What is three?

14 A. Strong.

15 Q. Do you remember what four is?

16 A. Inconsistent.

17 Q. And what is five?

18 A. Poor.

19 Q. What did you receive in this one?

20 A. Three strong.

21 MR. HUBBARD: Let's go to 50, please, Mr. Fitzgerald.

22 Q. Turn to 50, Mr. Picarella, in your book.

23 THE COURT: Are you offering 50?

24 MR. HUBBARD: Yes, your Honor. Sorry.

25 MR. JACKSON: No objection, your Honor.

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1 THE COURT: Okay. Fifty is in.

2 (Plaintiff's Exhibit 50 received in evidence)

3 Q. What is the Exhibit 50?

4 A. That is my year-end review for 2011.

5 Q. And what is the date?

6 A. December 21, 2011.

7 Q. The document period shows from May 5 through the end of the
8 year, right?

9 A. Yes.

10 Q. Who gave you this review?

11 A. Ms. Hedges.

12 Q. And is this a three strong rating?

13 A. Yeah. The grade is different than the rating. The rate's
14 on the last page. But, yes, it was a three strong as well.

15 MR. HUBBARD: Let's go to the last page, please.

16 Q. Do you see the rating there?

17 And Ms. Hedges, your supervisor, gave you this rating
18 at the end of 2011?

19 A. Yes, she did.

20 Q. Did you meet with her when she gave you the rating?

21 A. Yes.

22 Q. Did she say anything to you at that time as we heard here
23 in the opening statement about Mr. Pizzimbono or Ms. White not
24 thinking much of you or something like that?

25 A. Yeah. At this review meeting and the bonus meetings in the

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1 same timeframe, a little later in the bonus meeting she said
2 something to the effect that Mr. White -- Mr. Pizzimbono and
3 Ms. White did not think highly of me and I needed to work on my
4 relationship with them.

5 Q. Did they think highly of you or did they not think highly
6 of you at that time?

7 MR. JACKSON: Objection.

8 Q. Do you know at that time?

9 THE COURT: Sustained. Can you rephrase the question.

10 MR. HUBBARD: Yes, your Honor.

11 Q. Do you know whether or not what she told you at that time
12 was true?

13 A. I didn't believe it to be true, no.

14 Q. Why?

15 MR. JACKSON: Objection, your Honor.

16 Withdrawn. Withdrawn.

17 THE COURT: Go ahead, counsel.

18 THE WITNESS: I had only been working there a few
19 months and I was getting to know them. And I believe I had a
20 good relationship with both of them. In fact, a couple weeks
21 before that review Mr. Pizzimbono took myself and our wives to
22 dinner at his restaurant and I thought the relationship was
23 very good.

24 Q. Is that a couple weeks before Ms. Hedges told you that he
25 did not think much of your performance?

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1 A. Yes.

2 Q. Had Mr. Pizzimbono in this period of time, did
3 Mr. Pizzimbono or Ms. White say anything like that to you?

4 A. No. They did not.

5 Q. Did they say in this period of time anything complimentary
6 or encouraging to you?

7 A. Yes, they did.

8 Q. How about into the spring of 2012?

9 A. Yes.

10 Q. Do you know of any source other than Ms. Hedges of that
11 comment about them not thinking much of you?

12 A. She was the only source.

13 Q. Had anything happened to Ms. Hedges' status in the
14 organization by the time of that review meeting?

15 A. Yes.

16 Q. What?

17 A. She was moved off of the 9th floor trading floor to the
18 10th floor away from Mr. Pizzimbono. She considered it to be
19 a bit of a downgrade. She was moving closer to Suzy White.
20 There was a change in the organization --

21 Q. Let me ask the question.

22 A. Okay.

23 Q. Was her reporting relationship changed?

24 A. Yes.

25 Q. Was she -- how was it changed?

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1 A. There was a change at the COO level, chief operating
2 officer level. Mr. Mullen moved into another senior role in
3 the organization and his deputy, Ms. White, succeeded him as
4 the COO.

5 Q. My question -- what I was trying to find out is was there a
6 change in who Ms. Hedges reported to?

7 A. Yes. She was going to be reporting to Ms. White.

8 Q. Did she express any concern about that to you?

9 A. Yes.

10 Q. What did she say?

11 A. She was very concerned. She did not want to work for Suzy
12 White. She thought it was a bit of a demotion.

13 Q. Did she know -- do you know if she knew that you had been
14 hired to succeed her?

15 A. Yes. She knew that.

16 Q. Did she tell you that you were being hired for that reason?

17 A. Yes.

18 Q. When she interviewed you?

19 A. Yes.

20 Q. When you had this review with Ms. Hedges that she commented
21 about Mr. Picarella and Ms. White, did she say anything to you
22 about the rating she gave you, the three strong?

23 A. Yes, she did. She said there were discussions with
24 management about perhaps giving me a two but I had not been
25 there, at the firm long enough in order to do that. I was only

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1 there eight months and it's unusual for them to do that for
2 somebody that hasn't been there a year or greater.

3 MR. HUBBARD: Just a minute. Excuse me one minute,
4 your Honor.

5 Q. What review -- did she tell you that there was a review
6 that she considered giving you had you been there longer?

7 A. Yes. She said --

8 Q. Wait. Let me ask the question.

9 A. I'm sorry.

10 Q. Did she tell you that?

11 A. Yes.

12 Q. And what number did she tell you she was considering giving
13 you?

14 A. Number two.

15 Q. And is number two higher or lower than number three?

16 A. It's higher.

17 Q. Thank you.

18 Did there come a time when you met with Ms. Hedges and
19 complained to her about her treatment of Michelle Parker?

20 A. Yes.

21 Q. When was the first time you can recall doing that?

22 A. In the February March time frame.

23 Q. Why did you do that?

24 A. I was concerned for -- well I was concerned about the
25 impact that her behavior was having on Ms. Parker.

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1 Q. What did you observe -- what kind of behavior had you
2 observed that concerned you?

3 A. Well, I complained to her that she was dragging Ms. Parker
4 out to bars in the middle of the afternoon and in the evenings,
5 getting her drunk, coming back into the office the next day
6 telling stories of how Ms. Parker was sleeping with employees,
7 sleeping with executives, sleeping with clients. She was
8 continually using sexually explicit and intimidating language
9 with Ms. Parker.

10 Q. Did -- had you said anything at this point in time to
11 Mr. Pizzimbono about it?

12 A. No.

13 Q. So you're now talking to Ms. Hedges about it?

14 A. Yes. Directly to Ms. Hedges.

15 Q. Did you make any requests in connection with reporting that
16 conduct to her?

17 A. Well, yes.

18 Q. Did you ask her to do anything about it?

19 A. Yes. I told her to stop.

20 Q. Did she respond in any significant way?

21 A. No.

22 Q. Did that con -- do you know whether or not that conduct you
23 complained about continued in that timeframe?

24 A. It did.

25 Q. Did you complain about it to anybody else?

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1 MR. JACKSON: Your Honor, I'm just objecting to form.

2 THE COURT: I'll allow it. Go ahead.

3 THE WITNESS: Yes, I did. I then reported it to
4 Mr. Pizzimbono, our boss.

5 Q. Did you observe anything about Ms. Hedges -- I mean
6 Ms. Parker's reaction to the language you described from
7 Ms. Hedges? Did you observe anything about the impact of that
8 language on her in the workplace?

9 A. Yes. She was crying all the time. At the desk. In
10 conference rooms. In the lobby. She was very distraught.

11 Q. Did you talk to Mr. Pizzimbono?

12 A. I did.

13 Q. In what timeframe?

14 A. In the March time frame, March 2012.

15 Q. Did you report to him the conduct you observed -- did you
16 report to him similar to what you complained about to
17 Ms. Hedges?

18 A. Yes. And I also let him know that I was having
19 conversations directly with Ms. Hedges.

20 Q. Did he suggest at any time that you go to the human
21 resources department and report her conduct?

22 A. Not at that time.

23 Q. You say that you had overheard her at the desk using
24 sexually explicit language with Ms. Parker. Can you summarize
25 it. Not in great detail. But just summarize some of the

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1 language that you heard.

2 A. Some of the --

3 MR. JACKSON: Your Honor, objection. This is not
4 relevant. We have an agreement.

5 THE COURT: Overruled. Go ahead.

6 THE WITNESS: She would say things to her like: What
7 underwear are you wearing? Did you have sex last night? With
8 who? What type of sex? You need to show more. She would talk
9 about her own extramarital affairs, explicitly extramarital
10 affairs she was having with a couple of executives. And that
11 was Ms. Hedges talking about her own affairs. She would also
12 talk about her own sexual relationship with her husband in
13 detail.

14 Q. Did you, in speaking to Ms. Hedges, object to that conduct?

15 A. Yes.

16 Q. Did you report that conduct to Mr. Pizzimbono?

17 A. Yes.

18 Q. Did he say anything to you about going to human resources?

19 A. Not at that time.

20 Q. Did you have any discussion with him about you continuing
21 to work with her yourself? To try to ameliorate this conduct?

22 A. Yeah. Well I'm not sure I understand the question.

23 Q. I'll rephrase it.

24 A. Okay.

25 Q. Did you have any discussion with Mr. Pizzimbono about you

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1 yourself attempting to speak to Ms. Hedges about it?

2 A. Yes. I told him --

3 MR. JACKSON: Objection.

4 THE COURT: Basis.

5 MR. JACKSON: Just the leading, your Honor.

6 THE COURT: Okay. Please rephrase the question.

7 MR. HUBBARD: Thank you, your Honor.

8 Q. Did you at any time speak to any of these executives about
9 an effort on your part to work with Ms. Hedges on this conduct?

10 A. Yes. I told Mr. Pizzimbono that I was having periodic
11 conversations directly with Ms. Hedges about her conduct and
12 telling her it needed to stop.

13 Q. Did you have any recollection of what her reaction to it
14 was?

15 A. She ignored it. The behavior would continue.

16 Q. Did Mr. Pizzimbono -- do you know if Mr. Pizzimbono took
17 any action with respect to the conduct that you had reported?

18 A. No.

19 THE COURT: Okay. Let's stop for the day. We're
20 getting close to five o'clock. Let's go ahead and break for
21 the day.

22 Members of the Jury, I'll ask that you be here bright
23 and early tomorrow at 9:30 and we'll continue with the
24 testimony.

25 Don't discuss this case amongst yourselves or with

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1 anyone else. Don't do any research related to any of the
2 issues pertaining to this case. Have a wonderful evening and
3 we'll see you tomorrow at 9:30.

4 (Jury excused)

5 (Continued on next page)

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1 (In open court)

2 THE COURT: I'll ask counsel to try to get here at
3 9:15 tomorrow just to avoid any unnecessary bumping into
4 jurors.

5 Anything else we need to address today?

6 MR. HUBBARD: Judge, just one question.

7 THE COURT: Should the witness leave for this? Is
8 this something relating to the witness's testimony?

9 MR. JACKSON: Your Honor, we have no objection.

10 MR. HUBBARD: Nothing --

11 THE COURT: You can sit down.

12 MR. HUBBARD: Nothing he didn't hear in terms of our
13 earlier discussion.

14 I'm just concerned that there might be some
15 misunderstanding on the defendant's part about your ruling on
16 the motion in limine that was filed with respect to all of
17 those Where's Waldo Sametime messages. Counsel referred to it
18 in his opening statement as if it was a part of the evidentiary
19 fabric in this case and your Honor granted the motion. So I
20 just want to make sure that if there's any confusion about
21 that, that counsel lets us know that he's confused and he
22 believes he's able to address that evidence because it's not
23 admitted and your Honor granted the motion.

24 THE COURT: Let me hear from defense counsel.

25 MR. JACKSON: Your Honor, I didn't say anything about

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1 the Sametime Chats in my opening statement. As I informed
2 defense counsel, we have a witness who is going to testify to
3 this and the Court made clear that you could call witnesses to
4 talk about contemporaneous performance. The question of
5 whether or not the Sametime Chats would be admitted the Court
6 left opened in terms of whether or not the door would be opened
7 by the nature of the testimony and said that it might be
8 rebuttal evidence but we haven't made any reference to the
9 Sametime Chats.

10 THE COURT: That was my recollection as well as the
11 motion in limine was dealing with the Sametime Chats and not as
12 we talked about the last time if there were witnesses who were
13 actually going to testify about this depending on what they
14 say.

15 MR. HUBBARD: I understand.

16 So -- but -- I understand that. The Waldo that we're
17 talking about comes from those Sametime Chats. I understand we
18 had a discussion about maybe some other witness.

19 THE COURT: Hold on. Hold on. Hold on.

20 It does seem to me that given the content of what
21 we're talking about that -- well, okay. Again, we have a
22 witness who is on the stand. It seems that a lot of this may
23 be something that that's going to be addressed with the
24 witness. But that's fine if neither side has an objection to
25 the witness being here. Okay. Go ahead, counsel.

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1 MR. HUBBARD: I don't think it's going to be addressed
2 with me but when we get to cross-examination.

3 THE COURT: Right.

4 MR. HUBBARD: The suggestion I hear is that someone
5 from HSBC will attempt to report that what's in the Sametime
6 Chats and then with these two employees where talking about
7 Waldo and that would be hearsay. So you can't evaluate what
8 you've already found to be inadmissible that way. So I'm just
9 concerned about something that is so plainly inadmissible, that
10 is these Waldo stuff in these Sametime Chats circulating into
11 the opening statement.

12 THE COURT: My recollection of this the last time that
13 we dealt with this is that defense counsel claim that there
14 were witnesses who were going to testify themselves as to their
15 own personal knowledge that someone reported to them these
16 Where's Waldo comments, not that they observed them in the
17 Sametime Chat or something like that.

18 MR. HUBBARD: I understand that, your Honor, and they
19 might do that but that -- wouldn't that be hearsay?

20 THE COURT: I thought we -- I think we ruled on that
21 before but we can deal with that again as it comes up. It
22 seems to me that that is certainly -- you certainly in your
23 opening statement certainly did talk a lot about these
24 pretextual nature of the reasons that the defendants gave for
25 firing Mr. Picarella, but we'll cross that bridge when we get

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1 to it. Doesn't seem that that's anything that's going to
2 necessarily come up with this witness.

3 MR. HUBBARD: Thank you, your Honor.

4 THE COURT: Is there anything else we need to deal
5 with?

6 MR. HUBBARD: Not from the plaintiff, your Honor.

7 MR. JACKSON: Your Honor, I don't think we need to
8 address this any further. I'll just say I think we'll have to
9 see what the rest of the testimony is but cross-examination I
10 think is going to cover a number of subject matters with this
11 witness.

12 I would ask the Court if the Court could inquire of
13 Mr. Hubbard as to a projection for how much time he anticipates
14 just so that we can -- we're making his witnesses available to
15 him so we want to make sure that we're understanding where we
16 are in the case.

17 THE COURT: Okay. That seems to make some sense.
18 Mr. Hubbard, do you have a sense of how much longer you have on
19 direct?

20 MR. HUBBARD: I just started, your Honor. I think
21 it's going to take a few hours. It could take three or four
22 hours. He's the main witness on our end. The other witnesses
23 are defense witnesses we're calling in for brief, you know, or
24 less extensive testimony. So I would think that it would take
25 certainly the morning tomorrow and maybe into the afternoon for

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1 Mr. Picarella's direct to end.

2 THE COURT: Can you give me an offer of proof? I
3 think I understand what Mr. Picarella's testimony is going to
4 be about, but can you give me an offer of proof because it
5 seems that you've certainly -- I know you said you just
6 started. It seems that you've gotten close to a lot of the
7 meat of some of this in terms of the alleged retaliatory motive
8 here. But can you give me a sense.

9 MR. HUBBARD: A lot of that was in the opening, your
10 Honor, but I haven't through the -- I've only gone through with
11 him the very first complaint he made of many and I've only gone
12 through with him virtually none of the retaliatory acts that
13 took place, including what we say was the trumped up reason to
14 fire him. It's extensive.

15 I mean I could tell your Honor that it's -- I'm going
16 as fast as I can but I can't say it's going to be brief.

17 THE COURT: Okay. I'm just trying to get a sense
18 again of whether or not -- it seemed that in your opening
19 statement you were doing sort of a -- equivalent of what would
20 be called a double direct. I'm going to make sure we're not
21 going to get in that situation where you're going to go over
22 all of this briefly with this witness and then go over this
23 same information again in further detail along with this
24 witness. We want to keep things moving along. The jurors are
25 here. They're active. There have already been some moments

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1 where they've been starting to get a little restless. We want
2 to keep things moving. I understand this is the plaintiff and
3 I certainly want to be lenient and give you time but it seems
4 to me that both parties seem to be going at sort of
5 cross-purposes here if the goal was to try to move things along
6 and get to the real issues here.

7 I am inclined to allow plaintiff's counsel to lead a
8 little bit to get to some of this preliminary stuff so that we
9 can move things along. If the defendant wants to object to
10 that, that's fine. But if we're going to have open-ended
11 questions when we're talking about did you make this complaint
12 and when did you make this complaint, it's going to slow things
13 down a little bit.

14 MR. HUBBARD: I had to prepare it that way because I
15 didn't know how it would be and I certainly can move it along,
16 but the questions that I was asking the gentleman, other than a
17 couple of questions, I asked just to -- just to deal with what
18 he said in the opening. I'm only on -- I'm only on February,
19 March of 2012.

20 THE COURT: Right.

21 MR. HUBBARD: That's where we are. That's very early
22 in this episode. But I take your Honor --

23 THE COURT: I'm saying that it very well may be that
24 it takes three or four hours. I just want to try to make sure
25 that you can move things along efficiently.

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1 So, again, if we're getting to some certain
2 preliminary matters I will give counsel some leeway to lead so
3 we can get through some of this stuff in terms of the -- I
4 don't believe there's going to be any dispute in terms of the
5 date of some of these complaints, or is this there? Is there
6 any dispute about that?

7 MR. JACKSON: There is, your Honor. We disagree with
8 the timeline that Mr. Picarella is suggesting in terms of when
9 he made his complaints. It's something of an important
10 dispute.

11 But I will just say, your Honor, we take the Court's
12 point. I was trying -- I think I only made a couple of leading
13 objections. I was trying to allow leading. It was really only
14 on the points that I thought get to sort of the nature of some
15 of the complaints.

16 But we trust the Court's judgment about what will make
17 it faster. We thought it would make it faster with some of
18 that if there was just one open-ended question like: What
19 happened? What did you say to him? But we definitely defer to
20 the Court's wisdom on that and we will take the Court's advice
21 not to object where the leading --

22 THE COURT: That's fine. You're free to object if you
23 feel an objection is appropriate. But I guess what I'm trying
24 to figure out is is there actually a dispute between the
25 parties as to when Mr. Picarella made complaints?

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1 I'm not talking about his motivation for making the
2 complaint. I'm not talking about the substance of his
3 complaints. But in terms of the timeline in terms of when
4 certain complaints were made, is there actually a dispute about
5 that?

6 MR. JACKSON: The dispute, your Honor, is about what
7 the nature of the complaints was at the time because there's
8 only one type of complaint that is protected activity in this
9 case and that is the complaint about Ms. Parker. That in our
10 view doesn't take place until late in 2012. Mr. Picarella I
11 think, his testimony is that it took place early in 2012. And
12 this is the subject of discussion at depositions and a number
13 of other places. But we do have a dispute about that that we
14 think is material.

15 THE COURT: It seems again, and I'll hear from
16 counsel, because it seems again to make sense from an
17 efficiency standpoint to again allow plaintiff's counsel to
18 lead a little bit in terms of the dates of these complaints. I
19 understand that there is a dispute between the parties as to
20 what may have constituted a complaint or what the nature of the
21 complaints was. But in terms of moving these things along, the
22 fact that the defense has a different view about the nature of
23 the complaints, that's something that you can deal with on
24 cross-examination. But in terms of getting these dates out of
25 the way because it seems that there are several dates it does

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1 seem that it's in everyone's interests to move that along since
2 there is no dispute about the dates.

3 MR. JACKSON: That's fine, Judge. Thank you.

4 MR. HUBBARD: We will work toward that goal, your
5 Honor.

6 The thing that I'm trying to deal with is the
7 defendant contests protected activity. So that's why I have to
8 go into detail about what was said.

9 THE COURT: No. That's fine. I'm not saying that you
10 shouldn't go into what was said. But in terms of instead of
11 saying what happened next, you can talk about, as you've done:
12 Did you complain to so and so about this? When was that?

13 MR. HUBBARD: Yes, sir.

14 THE COURT: Then what did you say as opposed to what
15 happened next and then going back and forth to try to get out
16 these dates.

17 MR. HUBBARD: I'm just trying to do it the
18 old-fashioned way. It's not necessary. We can do it that way.

19 THE COURT: One other thing that we can do that maybe
20 can speed things up to the extent that there seem to be, I'm
21 thinking about at least 88 percent of the documents that the
22 parties wish to submit into evidence, there is no dispute
23 about, counsel can confer about that, give me a list and then
24 we can do this even, I guess we can do this in the presence of
25 the jury, but just have plaintiff's counsel say: I move to

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1 admit blank, blank, blank, blank, blank, blank, blank, blank.

2 No objection. They're all in. We don't have to keep going
3 through all of that in front of the jury.

4 MR. HUBBARD: Yes, sir. We should do that.

5 MR. JACKSON: If Mr. Hubbard will send us a list
6 tonight of the exhibits that he intends to admit we will
7 definitely be able to do that, your Honor. It would just be
8 difficult if we're hearing it right at that moment.

9 Your Honor, related to that with the demonstratives.
10 I think it probably makes sense -- all the demonstratives have
11 been admitted, but I think it probably makes sense right before
12 the directs in this case if we could have a practice of just
13 flashing what the demonstratives will be so that we know what
14 they are before they are going up.

15 THE COURT: Okay. That makes sense to me.

16 MR. HUBBARD: I have a list right here, so we're off
17 and running.

18 MR. JACKSON: Thank you.

19 THE COURT: Okay. Sounds good. Anything else from
20 plaintiff's counsel?

21 MR. HUBBARD: No. Thank you, your Honor.

22 THE COURT: Anything else from defense counsel?

23 MR. JACKSON: Given the representation, your Honor, we
24 just would want to confirm. We're going to -- we had talked
25 about having two short witnesses available tomorrow. We're not

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1 going to ask those people -- our plan would be not to ask those
2 people to come tomorrow but to plan to come Wednesday because
3 if it's going to be three or four hours that's going to take up
4 the bulk of tomorrow and then there's cross-examination, so.

5 THE COURT: Are there other witnesses who are
6 available just in case?

7 MR. HUBBARD: We have -- we have a witness who is here
8 from London, Mr. Mullen, to testify after Mr. Picarella. So he
9 is here and available. And then I think Ms. Weiss, they tell
10 us Ms. Weiss is ready to go first thing Wednesday morning. And
11 we had discussed having Ms. Malanga. I think she's at the firm
12 so she's just right down the street. She can be on call to
13 come if we need.

14 THE COURT: Okay. Sounds good. So let's ask counsel
15 to get here at 9:15 tomorrow.

16 Anything else from either side?

17 MR. HUBBARD: No. Thank you, your Honor.

18 MR. JACKSON: No, your Honor.

19 THE COURT: Okay. Good night.

20 (Adjourned)
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